Mr Justice Clifford

SUPREME COURT OF THE UNITED STATES.

Nos. ~~159~~ and ~~160~~.
81. & 82.

JOHN S. LAWRENCE, APPELLANT,

vs.

JOHN DENBREENS ET AL., CLAIMANTS OF THE BRIG "LIEUT. ADMIRAL COLLENBERG," HER TACKLE, &C.;

AND

JOHN S. LAWRENCE, APPELLANT,

vs.

JOHN DENBREENS, IRA DENBREENS, AND MARTIN DENBREENS.

G. S. GIDEON, Printer, 511 Ninth street, Washington.

31 . 12

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INDEX.

	Original.	Print.
Certificate of clerk circuit court	1	1
Libel	2	2
Stipulation for libellants' costs	6	3
Claim of Denbreens	7	4
Stipulation	8	4
Do	9	5
Answer to libel	10	6
Libel	12	7
Consent for commission	18	10
Order for do	20	11
Testimony A. M. Lawrence	23	13
" C. Parsons	24	14
" J. M. Smith	25	14
" J. A. Wells	25	14
" J. Osborne	26	15
" Curtis Ackerly	26	15
" J. de Garmo	27	15
" T. R. Mintura	27	15

GIDEON, Print.

	Original.	Print.
Testimony A. M. Witlock	28	16
" C. M. Miner	28	16
" G. H. Avery	28	16
Deposition of P. L. Schep	29	16
Charter party	39	22
Exhibits	41	23
Deposition of J. Vandermeiden	53	29
" E. S. Petersen	57	31
" G. Rickmers	63	34
Interrogatories	71	40
Deposition of Wm. Adam	77	42
" F. Martin	81	44
" G. Seidel	85	47
" J. da S. Valgas	93	50
" D. P. dos Santos	99	53
Exhibit	105	56
Decree of district court	112	61
Final decree district court	113	61
Notice of appeal	114	62
Bond for costs	116	63
Appeal bond	118	64
Petition of appeal	120	65
Proceedings of circuit court	124	66
Decree of circuit court	125	67
Petition of appeal to Supreme Court U. S.	129	68
Appeal bond	132	69
Citation and service	134	70
Petition of appeal	136	70
Appeal bond	138	71
Citation and service	140	72

UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, Kenneth G. White, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this [SEAL.] sixth day of December, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the said United States the eighty-fourth.

KENNETH G. WHITE, *Clerk.*

1 At a stated term of the district court of the United States of America, for the southern district of New York, held at the City Hall, in the city of New York, on Thursday, the 24th day of March, in the year of our Lord one thousand eight hundred and fifty-nine.

Present, the Honorable Samuel R. Betts, district judge.

JOHN S. LAWRENCE
vs.
THE BRIG LIEUTENANT ADMIRAL COLLENBERG, her tackle, &c. } Vol. 13, page 390.

1856, June 19. The libellant files his libel in the words and figures following, to wit:

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern district of New
2 York:

The libel and complaint of John S. Lawrence, of the city of New York, merchant, against the brig or vessel called the Lieut. Adm'l Collenburg, her tackle, &c., and against P. L. Schip, master thereof, respectfully shows:

First. That this is an action founded upon contract, civil and maritime, and said vessel, and the master thereof, is now in this district.

Second. That on or about the twelfth day of December,
3 1855, the said brig lying in the port of Palermo, J. & V. Florio shipped on board said vessel in good order 512 can-

tons brimstone, 200 bags sumach, 50 bags soft-shell almonds, 10 casks argols, 50 bags filberts, 100 boxes shelled almonds, 10 cases manna, 47 cases liquorice paste, 45 bags walnuts, 700 boxes lemons, 2,150 boxes oranges, 50 bags sumach, as by the bill of lading now in the possession of libellant will more fully appear, which
4 the master of said vessel, on behalf thereof, agreed to deliver in New York to the libellants, in like good order and condition, dangers of the seas excepted, for the consideration of the freight therein agreed to be paid.

Third. That although the said vessel has arrived in this port, and although the libellant has always been, and now is, ready and willing to pay the freight on said cargo, yet neither the master of said vessel, nor any person on his behalf, has ever deliv-
5 ered said cargo, but, on the other hand, has failed to deliver a large portion of said cargo, and the balance in a very bad and injured condition, to the damage of libellant of five thousand dollars.

Fourth. That libellant has demanded compensation from said vessel for said injuries and damage to said cargo, but the master and owners refuse to make the same.

Fifth. That all and singular the premises are true, and within the jurisdiction of this court.

6 Wherefore the libellant prays that process in due form of law may issue against the said brig or vessel called the Lieutenant Admiral Collenberg, her tackle, apparel, and furniture, and also against the said master, and that all persons having or pretending to have any right, title, or interest therein, may be cited to answer all and singular the matters so articulately propounded, and that this honorable court would be pleased to pronounce for the damages aforesaid, and for such other and
7 different relief in the premises as shall to law and justice appertain, and to condemn the said brig and master, and the party intervening for his interest in said brig, and costs.

JOHN S. LAWRENCE.

BEEBE, DEAN & DONOHUE,
Proctors for Libellants.

Subscribed and sworn to before me, this 19th day of June, A. D. 1856.

JOSEPH C. LAWRENCE,
[SEAL.] *Notary Public.*

Endorsed: 13. 390. U. S. District Court. John S. Lawrence ag't The Brig Lieutenant Admiral Collenberg. Libel. Beebe, Dean & Donohue, proc's.

8 Filed June 19, 1856.

District Court of the United States for the Southern district of New York.

Filed the 19th day of June, 1856.

Stipulation for Libellant's Costs, entered into pursuant to the Rules and Practice of this Court.

Whereas a libel was filed in this court, on the 19th day of June, in the year of our Lord one thousand eight hundred and fifty-six, by John S. Lawrence against the brig Lieutenant Admiral Collenberg, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said brig may be condemned and sold to pay the demands of the libellant, and the said libellant and W. R. Beebe, surety, parties hereto, hereby con-
9 senting and agreeing, that in case of default or contumacy on the part of the libellant or his surety, execution may issue against his goods, chattels, and lands, for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall
10 appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against him by this court, or in case of appeal, by the appellate court.

JOHN S. LAWRENCE,
Pr. W. R. BEEBE.
W. R. BEEBE.

Taken and acknowledged this 19th day of June, 1856, before me.

JOSEPH BRIDGHAM,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

W. R. Beebe, party to the above stipulation, being duly sworn, doth depose and say that he resides in the city of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

W. R. BEEBE.

Sworn to this 19th day of June, 1856, before me.
11 JOSEPH BRIDGHAM,
U. S. Commissioner.

Recorded the 19th day of June, 1856.

G. F. B., *Clerk.*

At a stated term of the district court of the United States of America for the southern district of New York, held at the City

Hall, in the city of New York, on Saturday, the 12th day of July, in the year of our Lord one thousand eight hundred and fifty-six.

Present, the Honorable Samuel R. Betts, district judge.

THE BRIG LIEUTENANT ADMIRAL COLLENBERG
asm.
JOHN S. LAWRENCE.

And now, Christian F. Funch, intervening for the interest of John Denbreens and als., appears before the honorable court and makes claim to the said brig, as the same are attached by the marshal, under process of this court, at the instance of John
12 S. Lawrence, and the said John Denbreens, by his agent, avers that he was in possession of the said brig at the time of the attachment thereof, and that the persons above named are the true and bona fide owners of the said brig, and that no other person is the owner thereof; and the said Christian F. Funch is the true and lawful bailee thereof, as agent; wherefore he prays to defend accordingly.

CHR'T FRED. FUNCH.

Sworn to and subscribed this 12th day of July, A. D. 1856, before me.

GEO. W. MORTON,
U. S. Commissioner.

OWEN & VOSE,
13 *Proctors for Claimant.*

Filed the 12th day of July, 1856.

District Court of the United States for the Southern district of New York.

Filed the 12 day of July, 1856.

Stipulation entered into pursuant to the Rules and Practice of this Court.

14 Whereas a libel was filed in this court, on the 19th day of June, in the year of our Lord one thousand eight hundred and fifty-six, by John S. Lawrence, against the brig Lieutenant Admiral Collenberg, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said brig may be condemned and sold to pay the demands of the libellant, and the
15 parties hereto hereby consenting, that in case of default or contumacy on the part of the cl'mts or their surety, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands; and whereas, also, a claim has been filed in said cause by John Denbreens et als.:

Now, therefore, it is hereby stipulated and agreed, for the benefit

of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby bound in the sum of two hundred
16 and fifty dollars, conditioned that the cl'mts above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or upon an appeal, by the appellate court.

J. DENBREENS and others,
By C. D. FUNCH, as agent.
CHR. FRED. FUNCH.

Taken and acknowledged, this 12th day of July, 1856, before me.

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Christian F. Funch, *part* to the above stipulation, being duly sworn, doth depose and say, that he resides in the city of New York; that he is worth the sum of five hundred dollars, over and
17 above all his just debts and liabilities.

CHR. FRD. FUNCH.

Sworn to, this 12th day of July, 1856, before me.

GEO. W. MORTON,
U. S. Commissioner.

Recorded the 12th day of July, 1856.

G. F. BETTS, *Clerk.*

District Court of the United States for the Southern district of New York.—In Admiralty.

Filed the 12th day of July, 1856.

Stipulation entered into pursuant to the Rules and Practice of this Court.

Whereas a libel was filed on the 19th day of June, in the
18 year of our Lord one thousand eight hundred and fifty-six, by John S. Lawrence, against the brig Lieutenant Admiral Collenberg, for the reasons and causes in the said libel mentioned; and whereas the parties in interest have agreed to waive the service of process on the clm'ts filing stipulations for costs and value, the latter in the sum of $3,000, the stipulation for value to rep-
19 resent the vessel in lieu of her, being in the custody of the marshal, under the process about to be issued in pursuance of the prayer of said libel; and the clm'ts further consenting to appear and answer the libel on file on or before the next, as appears from said consent now on file in said court; and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the clm'ts or their surety, execution for

the above amount may issue against their goods, chattels and lands:

20 Now, therefore, the condition of this stipulation is such, that if the stipulator undersigned shall at any time, upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above named suit may proceed, and upon notice of such order or decree, to Owen & Vose, esquires, proctors for the claimants of said brig, abide by and pay the money awarded by the final decree rendered by the court, or the appellate court if any appeal intervene, then this stipulation to be void, otherwise to remain in full force and virtue.

J. DENBREENS and others,
By CHR. FRD. FUNCH. *Agent.*
CHR. FRD. FUNCH.

Taken and acknowledged, this 12th day of July, 1856,
21 before me.

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Christian F. Funch, party to the above stipulation, being duly sworn, deposes and says, that he resides in the city of New York; that he is worth the sum of six thousand dollars, over and above all his just debts and liabilities.

CHR. FRD. FUNCH.

Sworn to, this 12th day of July, 1856, before me.
GEO. W. MORTON,
22 *U. S. Commissioner.*

To the Honorable Samuel R. Betts, Judge of the District Court within and for the Southern district of New York:

The answer of John Denbreens, Ira Denbreens and Martin Denbreens, owners of the Dutch brig "Lieutenant Admiral Collenburg," her tackle, &c., and of P. L. Schif, master thereof, to the libel and complaint of John S. Lawrence, libellant.

First. These respondents admit that there were shipped
23 in and on board of the said brig, at Palermo, certain goods and merchandise mentioned in the bill of lading thereof referred to in the said libel.

Second. These respondents deny the allegations contained in the third article, except so far as is hereafter stated, and insist that the goods and merchandise in the said bill of lading mentioned was and has been duly transported and delivered to the libellant, and the same has been received by him, except 414 boxes of lemons and oranges, parcel thereof, which perished from their own
24 inherent tendency to decay, and not through any fault or

negligence of those in charge thereof; that the cargo so delivered and received as aforesaid was in like good order and condition as when laden on board, saving and excepting the damage occasioned by perils of the seas, and except such as was occasioned by the inherent nature of the same to decay; and the respondents insist that the contract in the said bill of lading mentioned has been in all things well and truly performed on the part of
25 the said vessel, and that freight is due upon the said cargo, and they deny the several allegations in anywise to the contrary, in verification whereof these respondents crave leave to refer to the proofs and depositions to be taken herein.

Wherefore they pray that the libel may be dismissed, and the libellant condemned in costs.

OWEN & VOSE,
Proc'rs for Cl'ts and Resp'dt.

Endorsed: 13. 390. U. S. District Court. The brig "Lieutenant Admiral Collenberg," &c., ads. John S. Lawrence. Answer.

OWEN & VOSE,
Proc'rs for Cl'ts and Resp's.

26 Filed July 21st, 1856.

To the Honorable Samuel R. Betts, Judge of the District Court within and for the Southern district of New York:

The libel and complaint of John Denbreens, Ira Denbreens and Martin Denbreens, owners of the Dutch brig Lieutenant Admiral Collenberg, against John S. Lawrence, of the city of New York, merchant, articulately propounds as follows:

First. That heretofore, and on or about the twelfth day of December, in the year 1855, while the said brig was lying at
27 Palermo, bound for New York, certain persons trading under the name of J. and V. Florio shipped and laded in and on board of the said vessel a cargo of merchandise specified in the bill of lading thereof hereinafter mentioned, to be transported and conveyed therein upon freight to the port of New York, and there to be delivered to the respondent upon being paid freight therefor.

Second. That afterwards, and on or about the day and year last aforesaid, at Palermo aforesaid, at the request of the said shippers, P. L. Schep, the master of the said vessel, made and signed
28 a set of bills of lading according to the usage and custom, and then and there delivered one or more of the said set to the said shippers, and which said bill of lading is in the words and figures following, to wit:

In bulk, 512 cantons brimstone. J. and V. Florio, Palermo, 200 bags sumac.

Shipped in good order and condition, by J. and V. Florio, of Palermo, in and upon the good

S. 50 bags soft-shell almonds.
A $\frac{1}{10}$ 10 casks argols (cant. 50, 44.)
F., $\frac{1}{50}$ 50 bags filberts.
J. and V. F., 100 boxes shelled almonds (c. 14.)
M. $\frac{1}{10}$ 10 cases manna.
L. $\frac{1}{47}$ 47 " liquorice paste, (c. 58, 47.)
W., 45 bags walnuts.
L., 700 boxes lemons.
O & O O., 2,150 boxes oranges.
J. and V. Florio, Palermo, 50 bags sumac.

ship or vessel called the L. A. Collenberg, Dutch colors, whereof P. L. Schep is master for this present voyage, and now lying in the port of Palermo and bound for New York, five hundred and twelve cantons brimstone, two hundred bags sumac, fifty bags soft-shell almonds, ten casks argols, fifty bags filberts, one hundred boxes shelled almonds, ten cases manna, forty-seven cases liquorice paste, forty-five bags walnuts, seven hundred boxes of lemons, twenty-one hundred and fifty boxes oranges, fifty bags sumac, being marked and numbered as per margin, and are to be delivered in like good order and condition at the aforesaid port of New York (all and every the dangers and accidents of the seas, and navigation of whatsoever nature and kind excepted,) unto John S. Lawrence, esq., or to his assigns, he or they paying freight for the said goods, as per charter party, with average accustomed. In witness whereof the master or purser of the said ship or vessel hath affirmed to 5 bills of lading, all of this tenor and date, one of which being accomplished the rest to stand void.

Dated in Palermo this 12th day of December, 1855.

Freight and contents unknown to

P. L. SCHEP.

Third. That the said vessel afterwards, and on the 16th December in the year aforesaid, set sail and departed from Palermo aforesaid upon her said voyage to New York, where she afterwards, and on or about the 20th May, 1856, arrived, and that she has duly delivered to the respondent, and the same has been received by him, the cargo mentioned in the said bill of lading, and every part thereof, except four hundred and fourteen boxes of oranges and lemons, which decayed and were lost on the voyage as hereafter more particularly stated. That the whole of the residue of the said cargo was delivered in like good order and condition as when received, except such injuries as were occasioned by perils of the seas and the natural tendency to decay, and that the vessel has performed the contract contained in the bill of lading, and the libellants are entitled to have and receive the freight and primage upon the said cargo according to the aforesaid bill of lading thereof.

Fourth. That during the progress of the voyage from Paler-

mo, and on or about the second day of January, in the year 1856, the said vessel, while on the high seas, encountered a violent storm which broke, carried away, and injured several of her masts, sails, and rigging, and so disabled and crippled her as to render her incapable of pursuing her voyage, and she was thereby forced and obliged to bear away, and she did accordingly bear away,
35 and put into the port of Lisbon, in Portugal, that being the nearest port, for repairs.

Sixth. That after she arrived at Lisbon aforesaid, the repairs rendered necessary by disasters aforesaid were procured to be made, and were made with all reasonable diligence and despatch, and the said vessel being made seaworthy, and fit to resume and pursue her voyage, again renewed the same, and sailed from Lisbon with all the aforesaid cargo in and on board thereof, except the decayed fruit so thrown out as aforesaid, on the 4th day of March,
36 1856, and arrived in New York at the time above stated.

Seventh. That while the vessel remained in Lisbon aforesaid, undergoing said repairs, the aforesaid oranges and lemons were found to be and were in fact in a perishing state and condition from the inherent tendency to decay, and in order to arrest the progress of such decay they were taken out of the vessel and stored in a suitable and proper place, and were subsequently, and before the reshipment thereof, all packed over and examined,
37 and all the rotten and decayed were thrown out, and the remainder well and properly packed in the boxes, and again laden on board. That the number which had rotted and were not fit for reshipment amounted to the aforesaid four hundred and fourteen boxes. That the master of the said vessel was in this and other ways forced and obliged to expend, and he did expend, various large sums of money for the preservation of the
38 cargo, and to prepare it for being carried and transported to the place of destination, and that the moneys so expended, and which the respondent is bound to pay, either by way of general average or special charges upon the cargo, amount to the sum of one thousand dollars and upwards.

Eighth. That the libellants, and those having the care and custody of the said cargo, have, in all things, well and faithfully discharged their duty in respect of the said cargo, and of the care and preservation thereof, and the libellants and their said agents
39 have, in all things, performed their aforesaid contract in the bill of lading mentioned, and they are now entitled to have and receive from the respondent, for the freight and primage upon the said cargo, the sum of eighteen hundred and sixty-two dollars and forty-seven cents, together with the charges aforesaid, amounting in the aggregate to the sum of twenty-eight hundred and sixty-two dollars and forty-seven cents, with interest.

Ninth. That the libellants are the owners of the said brig, and

entitled to have and recover the amount above mentioned;
40 that the respondent resided in the southern district of New York, and has received the said cargo within the said district by reason whereof, and of the contract aforesaid, he is liable to pay the same to the libellants.

Wherefore the libellants pray that process in due form of law, according to the course and practice of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said John S. Lawrence, and that he may be required to answer
41 all and singular the matters aforesaid, and that this honorable court would be pleased to decree the payment of the amount due as aforesaid, with interest and costs, and that the libellants may have such other and further relief as in law and justice they are entitled to receive.

OWEN & VOSE,
Libt's Proctors.

Endorsed: U. S. District Court. 13, 400. John Denbreens & als. vs. John H. Lawrence. Libel. Owen & Vose, liblt's
42 proct's.
Filed July 2d, 1856.

U. S. District Court.

THE BRIG LIEUTENANT ADMIRAL COLLENBERG, her tackle, &c., John Denbreens & als., Claimants,
ads.
JOHN S. LAWRENCE.

JOHN DENBREENS & als.
vs.
JOHN S. LAWRENCE.

It is hereby consented that a commission may issue in the first of the above entitled actions, on the part of the claimants therein, to be addressed to the U. S. consul or commercial agent, or a deputy, at Lisbon, in the Kingdom of Portugal, as commis-
43 sioners, authorizing them, or either of them, to examine on oath, upon interrogatories and cross-interrogatories to be thereto annexed, such person or persons as may be produced before them by the said claimants as witnesses for the claimants in said action.

That the said commission and the depositions thereunder taken may be returned by mail to Owen & Vose, claimants' proctors, and need not be filed, but may remain in their possession, and may be opened by them in the presence of or upon two days' written notice to the libellants' proctors, a copy thereof to be furnished to

the libellants' proctors, and that such commission and the depositions thereunder taken may be read upon the trial of, and other proceedings in each of the above entitled actions, on behalf of the claimants in the first and the libellants in the second thereof, in the same manner and with like effect as if the same had been issued by order of this court in each of said actions.

And it is further consented, that the interrogatories heretofore served for such commission may be deemed to be settled and allowed, and may be forwarded with such commission, unless cross-interrogatories thereto are served within ten days from the date hereof, and that until the return of said commission all proceedings in this action shall be stayed.

Dated New York, November 30th, 1857.

BEEBE, DEAN & DONOHUE.

Endorsed: 13, 390. U. S. District Court. The Brig Lieutenant Admiral Collenberg, &c., ads. John S. Lawrence. Consent for commission. Owen & Vose, cl'ts' proct's. Filed Nov. 30, 1857.

At a stated term of the district court of the United States of America, for the southern district of New York, held at the City Hall, in the city of New York, on Monday, the 30th day of November, in the year of our Lord one thousand eight hundred and fifty-seven. Present, the Honorable Samuel R. Betts, district judge.

THE BRIG "LIEUTENANT ADMIRAL COLLENBERG," her tackle, &c., John Denbreens and als., Claimants, ads. JOHN S. LAWRENCE. } Vol. 13, page 390, 400.

JOHN DENBREENS et als. vs. THE SAME.

On filing a consent signed by Beebe, Dean & Donohue, proctors for the libellant in the first entitled action, and on motion of Messrs. Owen & Vose, proctors for the claimants in said action, it is ordered, that a commission issue in the first of the above entitled actions on the part of the claimants therein, to be addressed to the U. S. consul or commercial agent, or a deputy, at Lisbon, in the Kingdom o Portugal, as commissioners, authorizing them, or either of them, to examine on oath, upon interrogatories and cross-interrogatories to be thereto annexed, such person or persons as may be produced before them by the said claimants as witnesses for the claimants in said action. That the said commission and the depositions thereunder taken

may be returned by mail to Owen & Vose, claimants' proctors, and need not be filed, but may remain in their possession, and may be opened by them in the presence of, or upon two days' written notice to the libellants' proctors, a copy thereof to be furnished to the libellants' proctors; and that such commission and the depositions thereunder taken may be read upon the trial of, and other proceedings in each of the above entitled actions, on behalf
49 of the claimants in the first, and the libellants in the second thereof, in the same manner and with like effect as if the same had been issued by order of this court, in each of said actions.

And it is further consented, that the interrogatories heretofore served for such commission may be deemed to be settled and allowed, and may be forwarded with such commission, unless cross-interrogatories thereto are served within ten days from the date hereof, and that until the return of said commission, all proceedings in these actions shall be stayed.

50 Filed the 30th day of November, 1857.

Tuesday, Dec. 14th, 1858.

U. S. District Court.

JOHN DENBREENS et al. vs. JOHN S. LAWRENCE. — Owen & Vose. Beebe, D. and D.

THE BRIG LIEUTENANT ADMIRAL COLLENBERG, John Denbreens and als., Claimants, ads. JOHN S. LAWRENCE. — Owen & Vose. Beebe, D. and D.

51 *Cross-actions.*

(Pleadings read.)

Mr. Owen, for lib'lts in 1st, and for cl'mts in 2d suits.

[See p. 17, fo. 70.] Peter L. Schep: (Dep'n 19th June, 1856—master of brig.)

Wednesday, Dec. 15th—Continued.

Stipulation, Aug. 3, 1858, to read certain depositions.

Palermo, Dec. 12, 1855. Bill of lading at Palermo, Exh. A.; J.
[See p. 23, fo. 103.] & V. Florio, consignees.

Palermo, Dec. 13, 1855. Charter party to J. & V. Florio, Palermo.

[See p. 22, fo. 97.] Survey of ship at Lisbon, (read, subject to objection.)

[See pp. 25 to 29, fo. 108 to 130.] Called for Jan'y 15, 1856—Subsequent proceedings, &c.

Jan'y 22, 1856—Report of surveyors.

52 Jan'y 22, 1856—Survey of cargo.
" 30, " Report of surveyors.
Feb'y 9, " Report on 2d survey.
" 19, " Further report.
" 25, " Final survey of vessel.
" 29, " Survey of cargo.

[See p. 30, fo. 131.] John Vandermeyden, (deposition,) mate of brig.

Log-book of brig put in evidence.

[See p. 32, fo. 140. E. Schmidt Petersen, (deposition.)
" " 35, fo. 156.] George Rickmers, (dep'n.)

53 Commission sent to Lisbon.

[See p. 42, fo. 191.] William Adam, (ex'd on the commission.)

[See p. 44, fo. 201. Francis Martin, do.
" " 46, fo. 212. George Seidel, do.
" " 50, fo. 230. Joseph da Silva Vulga, do.
" " 52, fo. 243.] Domingos Perez de Santos, do.

Freight claimed on all the cargo except 414 boxes.....		$1,862 47
To be deducted, $207 on the 414 boxes—excepted.....		207 00
		$1,655 47
Average statement, (subject to objection.)		
Claim, general average,.....	$143 50	
" special "	614 52	
	$758 02	758 02
		$2,413 49

54

Defence.

Alexander M. Lawrence, (sworn): Is shipping merch't, port of N. Y.; has been in fruit trade, importer from Mediterranean; saw this cargo on its arrival here, and its condition; made up an estimate respecting it. Others ex'd it with him; (names attached to estimate.) Found it in a very bad condition; thinks whole cargo (including what was thrown away) 75 per cent. on the fruit; thinks the repacking at Lisbon was a very improper pro-
55 ceeding; it caused a much more rapid decay of the fruit, by exposing the fruit to air and putting it in fresh paper; the original paper becomes a kind of skin. The decay increased by removing the boxes after being stowed.

Cross-ex'd.—Went to vessel, and looked into hatch; did not examine the fruit; libellant is his son; not then in business connection; witness ex'd the boxes on the dock; fruit dealers generally ex'd the fruit; it was sold at auction on the dock that same
56 morning; dealers raise as many lids as they choose, in order

to see the contents of boxes; not merely to layer on top; does not think there was a single box of sound; has been at Lisbon—never to Sicily. Witness does not generally keep fruit, but sells on arrival. It is customary for fruiterers to separate sound from unsound on purchase; but if intended to keep them for retail sale, they would not be opened, as that would tend to their injury.

57 Re-direct.—When the boxes are separated, it is for immediate use.

To court.—If cargo is in a condition of decay on voyage, he should prefer to leave it on board, and carry it through. The putrifying boxes would injure others, but not so much as taking away the boxes. Object of ventilating fruit is to give air passage amongst the boxes. Apparatus is furnished to vessels to enable air to be distributed amongst fruit.

Re-cross.—No interest in event of suit.

58 Charles Parsons (sworn): Fruit merchant for 20 years. Very injurious to fruit to open and repack and pick it on a voyage, and not good judgment to use it so, nor to land and move boxes of fruit in rainy weather; could not state any determinate per centage of loss likely to follow such usage. It would be injurious in any weather to unpack boxes in a warehouse and re-paper fruit, and particularly so in wet weather; a repacked cargo could not be expected to last any time; wit. does not dare to risk it over 8 or 10 days after repacking.

59 Cross.—If paper on oranges is damp or wet, his practice is to take it off and put on dry paper; have imported fruit; is a dealer here. If importing this cargo, should not have overhauled and repacked it at Lisbon; would be better to leave it as it was; a box of lemons or oranges with say 10 damaged oranges in, would last in hot weather 20 to 30 days; in cold weather 40 days, he supposes.

60 John M. Smith (sworn): Native of Lisbon; left there in 1842; knows means of repairing vessels there—a great many ship-yards, and all needful means for repairing vessels.

Cross.—Last time there, 10 y'rs ago; staid about 1 y'r; set up business for consignments to Brazil; no docks; ships lay out in roadstead for repairs.

John A. Wells (sworn): Appraiser C. H. when this cargo arrived; valued injury 85 per cent. on oranges, and 66 per cent. on lemons.

61 Cross.—Ex'd cargo on wharf after landed; opened a portion of the boxes—not all; made memorandum shortly after at his office; not present in court; that would not name number of boxes opened; took up box and looked into it; has no recollection of taking out any fruit, or how it was made; went through, so as to satisfy his judgment; rotten oranges smell badly, and

gather large bodies of flies, which appear to be generated in the fruit; been in habit of appraising fruits 7 or 8 y'rs.; knew fruit to come in good order on short passages—on long ones commonly bad. Voyages from Palermo are from 35 days to 80 and
62 90; 50 days considered a fair passage.

John Osborne (sworn): Merchant; has resided 9 months at Lisbon, and visited it frequently on business; has a vessel of his own there, and is perfectly acquainted with means of repairing ships; sometimes difficult and impossible to obtain spars, but work can always be had done without difficulty.

Cross.—Resided there 1833; was last there 2 y'rs since; vessels are repaired in river; but on application, the gov't dry dock may be obtained, but not of course; river 1½ mile wide opposite
63 town, and water deep. In heavy weather work could not be carried on, or very rainy weather; very hard to get men to work on their holidays; will work Sundays; men are pretty slow; they do caulking better than is done in U. S.; should think it doubtful whether 25 or 30 vessels could be repaired with depatch at same time there.

Re-direct.—Might be induced by double wages to work in bad weather; wages very low, and they cannot afford to expose themselves to be laid up.

Curtis Ackerly (sworn): In fruit and vegetable business,
64 in N. Y., for 20 y'rs; heard depositions read from Lisbon; in his judgment the removal of the cargo at Lisbon was bad; he thinks boxes ought not to be removed but for a few days; should consider it about equal to a total loss to remove and repack the boxes in manner stated; was about equivalent to a total loss.

Cross.—Has placed fruit not in a good state in cellar 30 days, and got a good deal of good fruit after 30 days in hot weather; generally oranges and lemons decay fast when they be-
65 gin.

Re-direct.—Has known fruit from Palermo arrive here in pretty good condition after voyage 80 to 100 days in cold weather; at other times it would come in very bad state even in that season, more particularly from Messina; 40 days short passage from Palermo, and 50 to 60 average passage.

Isaac De Garmo (sworn): Fruit dealer 16 y'rs; saw this cargo; he does not think the method of shipment at Lisbon was proper; taking away paper increases decay, &c.; should consider it
66 a total loss to so repack and despatch fruit on a 72 days' voyage. In his judgment the cargo brought in as originally stowed would have a moiety preserved when bro't here; to repack it there, would insure total destruction of whole—that is his judgment.

Thomas R. Minturn (sworn): Auctioneer; has sold fruit at auction largely; his house sells 99 out of 100 coming to this port;

sold this cargo in a very bad condition; not good conduct
67 to repack fruit on voyage from Lisbon; always finds it a fact that repacked fruit will come in damaged and spoiled. This cargo ought to have come through sound, it brought in in 60 days, and without being unpacked.

Cross.—Almost invariable that cargoes of fruit arrive damaged; depends upon state of weather—cold or warm—whether fruit beginning to decay will do so rapidly; hold of vessel ought to be throughout voyage of temperature of atmosphere.

Andrew M. Whitlock (sworn): Ship carpenter 24 to 28 yrs.; the spars made for vessels at Lisbon could be prepared in
68 two days, and as many more required to fit them aloft, in the port of N. Y.

Charles M. Miner (sworn): Ship builder; (same question;) will take 2 men 2½ days, not over, to complete the work, and 2½ days more would rig them complete.

Cross.—In N. Y. or the Connecticut yards; would cost here (N. Y.,) (requires time to compute.)

George H. Avery (sworn): Master of Regatta; (200 tons,) 9 men; takes him and his crew two days to put up the spars
69 described.

Testimony closed.

Mr. Donohue argues the cause for defendant, 1st suit.

Thursday, Dec. 16.

Mr. Owen argues the cause for libellants.

Cur. adv. vult.

U. S. District Court.

JOHN S. LAWRENCE
vs.
THE BRIG LIEUT. ADMIRAL COLLENBERG, her tackle, &c., and Peter L. Schep, Captain, &c.

Deposition of witnesses examined, de bene esse, on the part of the claimants in the above entitled action, on the 19th day of June, 1856, (sworn by an interpreter.)

Peter L. Schep, being duly sworn, on behalf of the claim-
70 ants, deposes and says: I am the master of the above named brig; she is now in this port and ready for sea; she is a Holland brig, and is owned by John, Ira and Martin Denbreens, the brothers Denbreens, of Vlaardingen, in Holland; I commanded the brig on her voyage from Palermo to this port; I have been a master of vessels for 7 years; this is a new vessel, and this was her first voyage. We took on board at Palermo a general cargo of merchandise, consisting, among other things, of oranges and lem-

71 ons; we took in 2,850 boxes of oranges and lemons; we had a full cargo, including those; the oranges and lemons were stowed from forward to the mainmast; the other goods were all aft; they were in boxes, and were very well stowed; we sailed from Palermo December 16th, 1855, bound to New York; the crew consitsed of 9 persons, all told; before we sailed, I signed bills of lading for the cargo.

Being shown a paper marked Ex. A, the witness says: This is the ship's bill of lading, which I signed; I signed a set of
72 bills; under this bill the cargo was transported to New York.

On the voyage from Palermo, we had bad weather, blowing weather and heavy gales, until the 2d of January; on that day, between 8 and 9 o'clock, we had a heavy sea from forward, which broke over the vessel and carried away the jib-boom, flying jib-boom, and both topmasts; we were obliged to cut away the rigging to get the jib-boom clear of the vessel, and to get rid of broken spars; she was rendered incapable to proceed on her
73 voyage; we bore away and put into Lisbon for repairs; that was the nearest port; we passed the bar on Jan'y 15th, and arrived at Lisbon on the 17th of Jan'y, when we came to anchor.

Q. Did you receive any, and if so, what directions, from the shipper of the oranges and lemons, in regard to their ventilation? (Objected to.)

Ans. The shipper requested me to keep them as airy as possible, which I promised to do.

Q. In what way did you comply with this request? (Objected to.)

74 A. I kept the hatches open at all times, when the weather permitted, to give them as much air as possible. The hatches were booby hatches; the vessel made no water on the voyage. When we arrived at Lisbon, I addressed myself to the Dutch consul; Messrs. Seidel and & Silva were our brokers at that place; they were ship brokers; I noted and extended my protest before the Dutch consul; I next called a survey on the vessel; the surveyors came on board the vessel and held a survey; I
75 was present when they were there.

Q. What did they recommend? (Objected to.)

A. They recommended me to repair everything that was broken and damaged. The vessel was repaired according to the survey; she had new spars, was caulked outside, and they rigged her up again; we sailed from Lisbon on the 4th day of March, and resumed our voyage to New York and arrived at New York about the 20th of May. For about 8 or 10 days after we arrived at Lisbon
76 it rained so much that I could not open the hatches, and could not air the fruit, and I was afraid that the fruit would be spoiled altogether.

Q. What did you do then?

A. I then asked the consul about the fruit; what I should do, as it would all spoil; I asked his advice; he advised me to take surveyors —fruiterers—to go and examine the cargo. (Objected to.)

Q. Did the consul appoint appraisers? (Objected to.)

A. He did; he appointed a Mr. Adam, and the other I do not remember.

77 Q. What was the business of the appraisers?

A. They were fruit merchants of Lisbon; they made a report of their survey in writing.

Q. Where is that report; the original?

A. I do not know; the only report I have ever seen is the one now produced by me; these papers which I now produce I got from the said consul at Lisbon, and they contain the protest, surveys, &c., (marked Ex. B.)

(The introduction of each of these papers is objected to.)

Q. What did the surveyors upon the fruit recommend,

78 and what did you do with the fruit?

A. They recommended to take some boxes on deck and open them and look at them to see in what state they were; we took about 40 boxes on deck and opened them; some of the fruit was rotten, about 10 or 12 in a box; some more and some less, were rotten; the surveyors then said the cargo must go on shore, must be discharged, as the fruit would rot without it; we took all the fruit out and placed it in a large store—in an open store;

79 after it had been 6 weeks on shore it was surveyed again; the surveyors asked me how long it would be before I could get under way; I told them it would be about 8 days; they then asked me how long a passage I should have; I said between 30 and 40 days, but I could not tell; they said 40 days' passage, and you say 7 days here; we will say 14 before you get away, and then the fruit will be all spoiled before you get to New York; they then ordered that the cargo be all repacked, and this was done;

80 I was there 3 times a day and saw them doing it; my broker was there all the time; while I was there they opened and emptied the boxes; then they took up the oranges, and if the paper around them was wet and the orange was not rotten, they put a new paper around them and put them in the box; if the orange was rotten they threw it away; as far as I know they went through all the boxes of oranges and lemons in that way; afterwards, and 5 days before I left Lisbon, I took the boxes and cargo on

81 board again; 414 boxes were found to be short; I saw, when I was there, that about 20 or 30 oranges in a box seemed to be rotten; not so many lemons; some boxes of lemons were all good; I cannot tell whether they put in more in a box than before; I did not count them; there were about 30 men engaged in packing them; I cannot tell how many days they were engaged; the store

in which the fruit was stored was a stone house, and the fruit was stored up in blocks so that we could walk all around among
82 them. I had carried oranges and lemons before for about 15 years, quite frequently, to Holland, (I had never brought any to America before,) but not always as captain.

Q. What is usually done to air the oranges, &c.?

A. We stow them so as to give them as much air as possible; we stow them fore and aft and leave about a foot and a half between the upper boxes and the beams for ventilation. These boxes were stowed in the same way at Lisbon; they were stowed by stevedores.

Q. What, in your opinion, would have been the condition
83 of the oranges and lemons upon arrival here if they had not been discharged and stored at Lisbon? (Objected to.)

A. They would have all been destroyed; there would have none come here.

Q. Did the consul know that the fruit was discharged, and did he approve of it? (Objected to.)

A. Yes, he knew it and approved of it.

Q. Did any person there advise you to keep the cargo in the hold of the vessel and not discharge it? (Objected to.)

A. No, sir, no person.

84 Q. Was it or not the opinion of all persons, as far as you knew, that the best course to be pursued was to discharge the cargo? (Objected to.)

A. Yes, sir, it was. The store in which the fruit was stored had windows all around; they were open; they had iron gratings. We were 73 days coming from Lisbon to New York; we gave the fruit as much air as we could always, when the weather would permit; we had very heavy gales on the 22d March; this was a long passage; on arrival at New York the vessel was consigned
85 to Funch & Meineke; we have discharged our fruit and cargo here; we delivered all the cargo mentioned in the bill of lading, except the 414 boxes short in Lisbon; we delivered the cargo to John S. Lawrence, the consignee named in the bill of lading.

Q. If the rotten oranges and lemons had been left in and had continued to decay, what effect would they have had upon the cargo? (Objected to.)

A. It would have injured the cargo; if the fruit had re-
86 mained in the vessel from the time we left Palermo until we arrived at New York, which was over 5 months, the fruit would have all gone to water and the ship would have been crank; the empty boxes at Lisbon, the surveyors directed to be placed on deck, because if placed below they would have prevented ventilation; they were placed on deck; on the 10th or 11th of March some of them were washed overboard, and I told the mate to take

the others to pieces and keep the ends of them upon which the
marks were; none of the oranges or lemons were eaten by
87 the crew, or by any one at Lisbon, so far as I know.

Being cross-examined, the witness says: I get 60 guilders a month, as wages, and no primage; I get nothing besides the 60 guilders; the brig belongs to Vlaardingen; I am still master of the brig; she is now bound to Rotterdam; I have never dealt in fruit and have never packed it. I left Palermo Dec. 16, '55; after leaving Palermo, we stopped at no place before we got to Lisbon.

Before this cargo it was about 4 years since I had taken a
88 cargo of fruit; that was from Lisbon to Holland. The last before that was 12 or 15 years before that, from Messina to Scheidam, in Holland; that was a cargo of oranges and lemons. I had no difficulty on that voyage. The cargo from Lisbon to Holland was also carried direct. While I was young I was in the small trade; after that, I was in all trades. Stevedores stowed the cargo at Palermo. On the day the sea struck us, we lost the flying jib-boom, jib-boom and the topmasts; no other spars. The topmasts broke off about half way between the caps and cross-trees.
89 We lost the two topsails, gallantsail, spanker, and mainsail; also, the stays and rigging attached to these spars and sails. There was no other damage. That was the only injury we sustained from the time we left Palermo till we got to New York. After we got to Lisbon, it was about 4 days before we got the surveyors on board. They have no docks or piers at Lisbon; all ships lie in the stream. The weather was bad before the surveyors got
on board; it was wet weather. When we got there I knew
90 we wanted new topmasts, topsails and sails, jib-boom and flying jib-boom, and the rigging I have spoken of. Nothing was done towards repairing the vessel till after the surveyors made their report, nor before we took the 40 boxes out. All the reports I have spoken of were made in writing. The recommendations I have spoken of were in writing. When the cargo was put in the store-house, the brokers had charge of it after it was taken out of the vessel. I never knew the fruiterers before I saw them there, and don't know what their business was, more than
my being told so. When I first opened the hatches to take
91 the cargo out, and open the boxes, nothing was the matter with the fruit, except the 10 or 15 boxes. No orange had a new paper put on unless the old paper was wet, and all the boxes were opened and emptied so far as I saw. I don't know how many oranges or lemons were in each box originally, or how many were put back in each box. Until the time of the accident, from Palermo, we had the hatches open always, except in gales; the forehatch was always open—never shut—from the time we left Palermo to the time we got to Lisbon; during the same time
92 the other hatch was shut 10 days in all, off and on, and

these were the blowy days; from Lisbon to New York the fore-hatch was open all the time; the other hatch during the same time was closed 13 days in all, off and on, and that was during weather unfit to keep it open. We took on board all of the 414 empty boxes, and all of them were perfect, except being empty. The first fruit was taken out while the surveyors were on board.

Re-direct resumed.—When we arrived at Lisbon, so far as I know, there were not any vessels there bound for New
93 York. While we lay there, there were two vessels, one American and one Dutch, which were there in distress—the same as mine was—bound for New York; one arrived at Lisbon before, and one after I did. The weather during the first fortnight was so bad there, that we could do nothing towards repairs. There were about 25 ships there being repaired, and we could not get the work done sooner. There were a great many holidays, in which the people would not work. The repairs were done
94 as soon as I could get them done. The building at which the fruit was stored was a general store-house, but under the government lock.

Cross-ex'n resumed.—I gave the order for the new sails to a sail-maker; his christian name was Emanuel; don't recollect his last name. I have no memorandum of the time of the order in the log-book, but have in my own book. I gave orders for the spars. No part of the sails were made on board, nor of the spars. We did the rigging work ourselves, with two hands to help.
95 The first spar was finished about a month after I got there; that was the foretopmast; it was taken aboard as soon as it was ready; the sails were not taken on board until we were ready for sea, except the sails. After we rec'd the foretopmast, we were always busy at the repairs, and we never stopped for want of spars. Nothing was done until the foretopmast came aboard. The vessel lay in the stream about an English mile from the store. The American vessel there was the St. Andrew. There was no
96 other American vessel in that port, so far as I know; I made no inquiries for vessels to go to New York.

(The libellants produced the log-book.)

P. L. SCHEP.

Subscribed and sworn to before me, June 20th, 1856.

JOHN G. VOSE,

[SEAL.] *Notary Public.*

Endorsed: (1.) U. S. District Court. John S. Lawrence ads. Brig "Lieut. Admiral Collenburg," &c. Deposition of Peter L. Schip, taken de bene esse for cl'ts. Owen & Vose, cl'ts' proc'rs.

PALERMO, 13*th November*, 1855.

Charter Party.

It is this day mutually agreed between P. Schep, of the good ship or vessel called the L. Ad. Collenburg, of the burthen
97 of tons, or thereabouts, now lying in this port, and Messrs I. and V. Florio, of Palermo, merchants:

That the said ship, being tight, staunch, and every way fitted for the voyage, shall load at this port a full and complete cargo of any lawful goods or merchandise, at the charterers' option, which the said merchants bind themselves or agents to ship, not exceeding what she can reasonably stow and carry, over and above her tackle, apparel, provisions, and furniture; and being so
98 loaded, shall therewith proceed to New York, or so near thereunto as she may safely get, and deliver the same on being paid freight—say three dollars per ton of 2,240 pounds brimstone, not exceeding forty tons; eighty cents per bag, of half a salm, for walnuts, filberts, and soft-shell almonds; seven dollars per ton of 2,240 pounds, for fine ground sumac, liquorice paste, and argols; ten dollars per ton, of forty cubic feet, for
99 manna; fifty cents per box of oranges and lemons; the whole in full, without primage, with a gratification of forty dollars to the captain if he arrives within sixty days after leaving Palermo; all expenses belonging to the vessel to be supported by the captain, and those belonging to the cargo by the charterers. The charterers are allowed to send on board a head stevedore, to be paid as customary by the captain. Freight for boxes of dry fruits, prunes, raisins, almonds, of 25 lbs. each, fifteen cents per box. Restraint of princes and rulers, the act of God, the Queen's enemies, fire, and all and every other dangers and accidents
100 of the seas, rivers, and navigation, of whatever nature and kind soever, during the said voyage, always excepted; the freight to be paid as customary.

It is agreed that this charter shall commence when the vessel is ready to receive cargo, and notice given thereof to the charterers by the captain. It is also understood that the vessel shall be stowed with the usual ventilation customary for vessels loading fruits for the U. States. The ventilation shall be governed
101 by the charterers, and the master binds himself to keep open the ventilators during the voyage, except in stress of weather, which might undergo the vessel or cargo.

Thirty running days are to be allowed the said merchants (if the ship be not sooner despatched) for loading the said ship at Palermo, and discharging the same at New York, where the said ship is to be consigned to the charterers' agents, on paying them 2 p. c. on the freight; and ten days on demurrage, over and above the said

laying days, at ten dollars per day penalty for non-per-
102 formance of this agreement, the amount of the freight.

It is understood that no merchandise whatever shall be shipped in the cabin, or by any other party, without the charterers' consent, on pain of forfeiture of the freight for such goods.

Broker. P. L. SCHEP,
IG. & V'ZO FLORIO.

Witness: GEO. TELL.

Consumed in Palermo twenty-two running days for loading.
IG. & V'ZO FLORIO.

Endorsed: Charter party.
Palermo, 30 Nov., 1855.

Ex. A.

In bulk, 512 cantars brimstone.
I. and V. Florio, Palermo,
103 200 bags sumac.
S., 50 bags soft-shell almonds.
A. $\frac{1}{10}$ 10 casks argols (cant. 50, 44.)
F. $\frac{1}{50}$ 50 bags filberts.
J. & V. F., 100 boxes shelled almonds, (c. 14.)
M. $\frac{1}{10}$ 10 cases manna.
L. $\frac{1}{47}$ 47 " liquorice paste, (c. 58, 47.)
104 W., 45 bags walnuts.
L., 700 boxes lemons.
O. & O. O., 2,150 do. oranges.
J. & V. Florio, Palermo, 50 bags sumac.

Shipped in good order and condition by J. & Vo. Florio, of Palermo, in and upon the good ship or vessel called the L. A. Collenberg, Dutch colors, whereof P. L. Schep is master for this present voyage, and now lying in the port of Palermo and bound for New York, five hundred and twelve cantars brimstone, two hundred bags sumac, fifty bags soft-shell almonds, ten casks argols, fifty bags filberts, one hundred boxes shelled almonds, ten cases manna, forty-seven cases liquorice paste, forty-five bags walnuts, seven hundred boxes lemons, twenty-one hundred and fifty boxes oranges, fifty bags sumac, being marked and numbered as per margin, and are to be delivered in the like good order and condition at the aforesaid port of New York (all and every the
105 dangers and accidents of the seas, and navigation of whatsoever nature and kind, excepted,) unto John S. Lawrence, esq., or to his assigns, he or they paying freight for the said goods, as per charter party, with average accustomed.

In witness whereof the master or purser of the said ship or vessel has affirmed to 5 bills of lading, all of this tenor and date, one of which being accomplished, the rest to stand void.

Dated in Palermo this 12th day of December, 1855.

106 Weight and contents unknown to in hend enzewight nez onbletleid ung sur Bethrop.

P. L. SCHEP.

Free for decay.

NEW YORK, *June*, 1856.

John S. Lawrence, esq.,

To Lieut. Adm. Collenberg and Owners, Dr.

To freight from Palermo—

On	40 tons brimstone, at $3	$120	
	200 bags sumac, at $7 per 14 bags	100	
	50 " soft-shell almonds, 80 c.	40	
	10 casks argols, or 8,827 lbs., at $7 per ton	27	58
	50 bags filberts, at 80 c.	40	
	100 boxes shelled almonds, at 15 c.	15	
	10 cases manna, 33 cub. ft., at $10 p. 40 cub. ft.	8	25
	47 cases liquorice paste, 8,205 lbs., at $7 per ton	25	64
	45 bags walnuts, at 80 c.	36	
	700 boxes lemons, at 50 c.	350	
	2,150 " oranges, at 50 c.	1,075	
	50 bags sumac, at $7 per 14 bags	25	
		$1,862	47
107	As per bill of lading and charter party	$1,862	47

FUNCH & MEINCKE,
Agents, 93 *Wall street*.

U. S. District Court.

In re the Brig Lieutenant Admiral Collenburg, &c. &c.

Capt. P. L. Schep requests the consul general to send
108 surveyors on board of his vessel to examine the damage done, and to make a taxation of the same, to have them repaired in the quickest way, and requested to be authorized to have it done.

Lisbon, 18 Jan'y, 1856.
(Signed) P. L. SCHEP.

We, G. J. Pilaer, Knight q. q., having seen the foregoing request of P. L. Schep, master of Netherl. brig "L. A. Collenburg," put into here, authorize him herewith to have the damages repaired, which may be recommended by the surveyors ap-
109 pointed by me, and also to buy the necessary materials for that purpose.

Lisbon, 18th Jan'y, 1856.
(Signed) G. J. PILAER.

To the Consul General at Lisbon:

P. L. Schep, master of Netherl. brig L. A. Collenburg, bound with a cargo of general merchandise from Palermo for New York,

but having put into here on account of damages received, informs that the damage done to my vessel shall be repaired as fast
110 as possible; but to be without any responsibility, he requests that the damages be examined and stated by competent persons to be appointed by your good self—a taxation to be made up, and an account of costs of repairs be made up in due form.

Lisbon, 18 Jan'y, 1856.

We, G. J. Pilaer, Knight q. q., after having seen the above request of Capt. P. L. Schep, master of Cg., and we hereby appoint and request ship's carpenter Manuel Joaquin de Sauza and
111 Antonio José Sampaya to repair, in company with ourselves and the consular agent, Karl Franz San Hutchens, on board of the above named vessel, to examine the damage received, to recommend the repairs to be done to make the vessel seaworthy, and to give a taxation of the amount of costs that will be incurred for repairing said damages, to give in these documents in due form.

This communication shall be transmitted to the knowledge of the ship carpenters and consular agent.

Lisbon, 18 Jan'y, 1856.

(Signed) G. J. PILAER.

Translation.

112 We, the undersigned, Jn. J. de Souza, A. J. Sampaio, naval master constructors, appraisers for the same, and public surveyors for the tribunal of commerce, having been named by the consul general of Holland to proceed with the survey of the Netherland brig "Lieut. Ad. Collenberg," Capt. L. Schep, having put into this port dismasted, on her passage from Palermo to this port, with a cargo of sundry merchandise, proceeded, accompanied by Mr. Gaspar J. Pilaer, consul general of Holland, and
113 Charles F. J. Hutchens, agent of the said consulate, serving as interpreter on board the said vessel, moored in front of this city; and after having prosecuted a rigorous examination, found the following damages to have been sustained:

The topmast, one fore-yard, the jib-boom and outer jib-boom, two topgallantmasts, with their iron works, the tops and caps of the topmasts, all carried away; the shrouds and back-stays of the topmasts, stays of the topmast and topgallantmast, martin-
114 gale-stays, jib-boom and outer jib-boom guys, all cut away to get clear of the wreck. The captain declares that he had cut away and lost two topsails, one topgallantsail, and one large staysail, and we found the caulking in the upper works of the vessel much loosened; withal to repair the damages above specified, and to place the vessel in a perfect state to carry the cargo to her place of destination, for the expense of spars, timber, iron work, time of workmen, and other consequent expenses, the amount of

five hundred and sixty-five milreis; in new sails, the amount
115 of four hundred and fifty-three mil five hundred reis; in new rigging, the amount of two-hundred and thirty-nine mil two hundred reis; and in new blocks, the amount of thirty-five milreis.

In testimony whereof, &c., &c.

Lisbon, 22 Jan'y, 1856.

To the Consul General of the Netherlands, at Lisbon:

The Capt. P. L. Schep, master of p. p., wishes to have the fruit, being part of his cargo, examined, to state in what condition they are in now, and to recommend what the best would be to do with them, for the benefit of the parties concerned, and request
116 you to appoint competent persons to hold this survey, and give him a copy of that survey in due form.

Lisbon, 22 Jan., 1856.

(Signed) P. L. SCHEP.

We, G. J. Pilaer, Knight, &c., after having seen the above request of Capt. P. L. Schep, we hereby appoint the fruit dealers William Adam and Franz Martin, to repair, together with us and the consular agent, Karl Franz Jan Hutchens, on board of above named vessel, and to hold a survey on the cargo and on the
117 fruit belonging thereto, to state the situation they are in now, and to recommend the way how to act to the best interest of the parties concerned in regard thereto, and to give in a survey stating these facts.

This communication shall be transmitted to the knowledge of the above named experts and the consular agent.

Lisbon, 22 Jan., 1856.

(Signed) G. J. PILAER.

(*Translation.*)

We, the undersigned, Wm. Adam and Francisco Martin, fruit merchants, established in the city of Lisbon, having been
118 named, on the 22d instant, by the consul general of Holland, to survey a portion of the boxes of oranges and lemons of the cargo on board the Dutch brig Lieut. Ad. Collenburg, bound from Palermo to New York, with a cargo of sundry merchandise, put into this port in consequence of sundry damages sustained, found it impossible to do so in consequence of the continuous tempestuous weather and heavy rains, until this day, when, it ceasing for a while, we went on board said vessel moored
119 opposite the city, accompanied by Mr. Gaspar J. Pilaer, consul general of Holland, and Charles F. J. Hutchens, agent of said consulate, as interpreter, and after having made a minute survey, found that the said fruit was perfectly well stowed and

properly ventilated, and scuttles, as well at the fore hatch as at the main hatch, with the necessary openings for the preservation of the said fruit; and ordering several casks of the said fruit to be taken from different parts of the hold and opened, found
120 them more or less deteriorated, not from fault of the vessel; so, for the interests of all concerned, all the said cargo should be discharged as soon as the weather shall permit, to be placed in well aired storehouse, and eight days before the despatching of the vessel we shall again survey the said fruit, and then determine what had best be done with it, for the interests of all concerned.

In testimony whereof, &c., &c.

Lisbon, 30 January, 1856.

The same persons as in the previous survey proceeded to
121 the storehouse on the wharf of Jozé A. Perrena, where we found the said fruit stored and well aired, and having ordered several boxes of the oranges and lemons to be opened and emptied, without regard to their marks, found that the said fruit had more or less rotted; consequently we found that the best way to improve the condition would be to open all the boxes, remove the rotten fruit and fill up the cases from others, until the whole was completed. This is what we recommend to preserve the fruit from total ruin to which it is exposed, in its present state,
122 on the voyage to be undertaken.

&c., &c.

Lisbon, 9 Feb'y, 1856.

The same persons as in the preceding survey found that what they had recommended for the preservation of the fruit had been done, and that it had been necessary to fill up vacancies in boxes to take 11 boxes marked OO, (in red,) 103 do. marked O, (in red,) 90 do. marked OO, 140 do. marked O, and seventy do. marked L, of which there remain the empty boxes.

Lisbon, 19 Feb'y, 1856.

123 We, the undersigned, Manuel J. de Souza and Antonio J. Sampaio, master constructors of the navy, appraisers of the same, and public surveyors for the tribunal of commerce, having been named by the consul general of the Netherlands, proceeded to examine the repairs made on the Netherland brig "Lieut. Ad. Collenberg," which put into this port dismasted, on her passage from Palermo to New York, with a cargo of sundries, to ascertain whether her repairs had been made in conformity with our
124 directions, as per previous survey, and whether she is in a fit state to proceed with her voyage, being accompanied by the consul general, and Mr. Hutchens acting as interpreter. After having made a thorough survey, we found that everything had

been done as recommended in the former survey, and we now consider the vessel in a perfect state to prosecute her voyage.

&c., &c.

Lisbon, 25 Feb'y, 1856.

To the Consul General of the Netherlands, at Lisbon:

125 Capt. P. L. Schep, master of Cg., having not sufficient money nor credit to defray the expenses caused by the damage of the vessel at sea, and consequently being compelled to take money on bottomry, and being not able to do so without your authorization, he now begs you will please to grant such to him.

Lisbon, 28 Feb'y, 1856.

(Signed) P. L. SCHEP.

We, G. J. Pilaer, Knight, &c., after having seen the above request of Capt. Schep, we hereby grant to him the authori-
126 zation, according to artikel 322 of the law-book of business, to take money in bottomry, being necessary to defray the expenses caused by the vessel's putting into here in distress, and for the repairs of the damages received by the vessel.

Lisbon, 29 Feb'y, 1856.

(Signed) G. J. PILAER.

(*Translation.*)

Condition on which is publicly offered this day, at the public Exchange of this city, at the customary hours, by Capt. P. L. Schep, of the Netherlands brig "Lieut. Ad. Collenberg," of the burthen of 100 lastros, at present moored in the Tagus, the
127 negotiation of a loan on maritime risk, of two to three thousand milreis, with the lowest bidder, which is required for the payment of the expenses occasioned by her putting into this port, on her voyage from Palermo to New York, and carrying the following cargo: 512 barrels of brimstone; 250 bags sumac; 10 manna; 47 do.; 14 bags and 100 boxes dry fruit; 630 boxes lemons; 1,806 boxes oranges, and 10 barrels cream of tartar.

1st. Of the capital and prem. shall be formed a letter of maritime risk in pounds sterling, regulating the exchange at 54¼
128 pence per milreis.

2d. This loan is only for this voyage to New York, where, upon the arrival of the vessel in safety, the captain obliges himself to pay the said letter within the term of three days.

3d. The purchaser shall pay the amount demanded on the delivery of the aforesaid letter, with the addition of ½ p. c. for brokerage.

4th. The captain, for the guaranty of the said letter, hypothecates the body, tackle, apparel, and other effects belonging to the said vessel, as also her aforesaid cargo.

Lisbon, 25 Feb'y, 1856.

129 (Sgd.) P. L. SCHEP.

Terms of the Sale.

The loan as above having been offered at the public Exchange this day until 3 p. m., it was taken by Mess. Miranda Filhos, merchants, residing in the Travessa da Passeirinha, at the premium of 15¾ p. c., this being the lowest premium obtained with the aforesaid conditions.

In testimony whereof, &c., &c.

Lisbon, 25 Feb'y, '56.

Endorsed: U. S. District Court. The brig Lieut. Ad. Collenberg ads. John S. Lawrence. Copy surveys at Lisbon.
130 Owen & Vose, cl'ts' proc's.

U. S. District Court.

JOHN S. LAWRENCE
vs.
THE BRIG "LIEUT. ADMIRAL COLLENBURG," her tackle, &c., and Peter L. Schep, captain, &c.

John Vandermeiden, being examined de bene esse as a witness for the claimants, being sworn, deposes as follows: I am 34 years of age, and am mate of the above brig; have been for 10 months; I am going to sea in the said brig; I have followed the sea 25 years; have been in vessels carrying fruit several years, from
131 Messina to Holland, and from Lisbon to Holland, and from St. Ubes to Holland. We sailed from Palermo on the 16th Dec., '55; we put into Lisbon in distress; we arrived at the bar on the 15th Jan'y, and came to anchor on the 17th Jan'y. On the voyage from Palermo to Lisbon the hatches were kept open, fore and aft, to give the fruit air.

Did you hear any directions given by the shipper at Palermo as to ventilating the fruit? (Objected to.)

Ans. I did not hear any directions given, but the shipper
132 requested the hatches to be kept open as much as possible. I kept a log-book while we lay at Lisbon, and kept it all the voyage; this is the log-book now produced. All the fruit we had on board was discharged at Lisbon. It was discharged because it was, that by taking them out of the vessel and storing them, it would be cooler. This was the opinion of the captain and others, who were fruit dealers. There was a survey held on the
133 fruit; it was held on board of the vessel; several boxes were then brought on deck and were opened and ex'd, whether they were rotten or not. I was present at the time. Some boxes contained ten, sixteen or twenty rotten ones; some were entirely rotten and some were decayed. Some were so rotten that they could not be put in boxes again. The boxes were then closed and put back again, and a day or two afterwards they were all

134 taken out of the hold and carried to a warehouse and stored. It was a stone house, as far as I recollect. I was not present at any examination of them afterwards. They were again shipped on board, about ten days before the vessel sailed; the log-book will show. We put into Lisbon, as the nearest port from where we lost our topmast and other spars; we put in there to repair. The log-book shows the weather, but it was bad weather. We sailed from Lisbon on our voyage on the 4th March, 1856; we
135 were detained there by bad weather and making repairs. We arrived in New York about the 20th May last, and delivered all the cargo we had on board. There were 414 boxes of fruit (oranges and lemons) short; by taking out the rotten oranges and lemons and repacking again at Lisbon, there were that number short. We had 100 boxes of shelled almonds aboard; they were stowed some in the cabin, and some behind the fruit in the hold. They were not landed at Lisbon.

136 Were any of the boxes of almonds opened or disturbed on the voyage from Palermo here?

No, sir; I received them on board at Palermo, and attended to discharging them here. The boxes were in the same condition when discharged here as when received at Palermo. I am sure that nobody touched the boxes. I took no receipt for them here when I delivered them.

Being cross-ex'd: I had been on board of a vessel with fruit before this not in four years; that voyage was from Lisbon
137 to Holland; not with this capt.; had been on board of a vessel with fruit not in 7 or 9 or 10 years; that voyage was from St. Ubes; from Messina 12 years ago; had no trouble on either of those voyages; delivered the cargo then as received. I did not see the oranges from the time they went ashore until the time they came aboard again at Lisbon; it took 3 or 4 days to discharge the oranges and lemons at Lisbon. I only know the persons were fruit-dealers from what I was told by the capt.
138 I only know that the 414 boxes oranges and lemons were short from picking over from being told so. We had no carpenter aboard the vessel. Vessel is 190 tons. We had 9 all told, including officers, in Lisbon.

J. VANDERMEYDEN.

Subscribed and sworn before me, this 20th day of June, 1856.

JOHN G. VOSE,

[SEAL.] *Notary Public.*

Endorsed: (2.) U. S. District Court. John S. Lawrence vs. Brig "Lieut. Admiral Collenburg," &c. Deposition of
139 John Vandermeiden, for cl'ts. Owen & Vose, cl'ts' proct's.

U. S. District Court.

JOHN S. LAWRENCE
vs.
THE BRIG LIEUT. ADMIRAL COLLENBERG, &c., and al.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

E. Schmidt Petersen, a witness produced and examined de bene esse on the part of the brig and owners in the above cause, being duly sworn, says: I am master of the schooner Hollandia, now in this port, and bound to Amsterdam; expect to sail early next
140 week. I have commanded the Hollandia for three years past. I was in Lisbon in January last. I sailed from Rotterdam on the 3d of December last, bound for New York, and while on the voyage experienced heavy weather and seas; lost bulwarks, &c., and three men overboard, and was compelled to put into Lisbon to repair; I arrived there on or about the 20th of January last, and had my vessel repaired, and sailed on my voyage on or about the 8th of March last, and arrived here about the 23d May last. I saw the brig Collenberg (Schep, master) in
141 Lisbon; she arrived there before me; she had put in there to repair sea damage; she lay near by my vessel; I was aboard of her; I knew Capt. Schep; I have known him for three or four years past. When I arrived, and for some time past, it was so rainy and stormy, and the swells were so high, that very often we could not go ashore in a boat. The vessels lay about an English mile from the shore. I had the repairs made to my vessel as soon as possible. It takes a great while to get repairs made
142 at that place. I know that Capt. Schep had the brig repaired at Lisbon. His repairs were made as soon as they could be; there was no delay to my knowledge. There was much rainy weather, and many holydays, during which time they will not work. I knew that Capt. Schep had oranges and lemons aboard his vessel.

Ques. Did he ever consult with you, or any other persons in your presence, in regard to the preservation of the same? And if so, state when.

Ans. Yes, he has consulted with me, and with others in my presence, as to what should be done with the fruit.

143 Ques. Was this before or after the same were discharged?

Ans. It was before.

Ques. What advice was given to him, and was such advice, in your judgment, correct?

Ans. We all advised him that he was bound to discharge them and store them, while he remained, in order to preserve them from decay. This was, in my judgment, the best that could be done.

Ques. How frequently were these consultations before the fruit were discharged?

Ans. Two or three times. I did not see the fruit, but
144 the capt. said the fruit was beginning to decay.

Ques. What advantage was there in taking the oranges and lemons out and placing them in store?

Ans. It gave them better ventilation; the storehouse was more airy.

Ques. Is ventilation necessary to preserve fruit in the hold of a vessel?

Ans. Yes, the more air the better; I have been as mate in vessels carrying fruit twice—once from Messina, and once from Lisbon to Holland; this was seven or eight years ago; there are great quantities of lemons and oranges shipped at Lisbon.

145 Ques. Who were the persons with whom the capt. consulted in regard to the oranges besides yourself?

Ans. They were Hanoverian and Dutch captains in the fruit trade; and I also saw the Dutch consul, and his interpreter, Mr. Hutchins; he is the sworn translator for many nations, and belongs to the custom-house.

Ques. Was there any difference of opinion in regard to what should be done to preserve the fruit?

Ans. No; all the opinions that I heard were, that the
146 captain had to discharge in order to preserve it.

Q. Were you consulted in regard to opening the boxes and picking over the fruit?

A. No, I was not, but I heard it talked of.

Q. Did you hear any person express any opinion that the captain erred in picking over the boxes?

A. No, I did not.

Ques. Suppose the fruit had not been discharged and picked over and repacked, (the same having began to decay before it was discharged,) would or not the fruit have arrived in good
147 condition?

Ans. No, I think it would have all rotted; this is my opinion. There were no vessels there, to my knowledge, bound for New York, ready to sail, or which sailed before the brig, or before I sailed.

Being cross-ex'd: I arrived in Lisbon 21st or 22d of Jan'y ; I first saw the capt. of this vessel on the 23d; the weather was bad; my vessel was damaged; I had lost three men, staunchions, bulwarks; our deck leaked; my cargo was Holland cargo—gin
148 and so forth; I lost jib-boom; foremast was sprung, and I had to get an entire foremast; it was 4 days after I got in before the survey was held; it was next day after the survey we commenced discharging; they ordered my vessel to be discharged, and we discharged a part to get at the injury; I left Lisbon 7th or 8th of March; the repairs on my vessel were all made by people

from the shore; I laid about ½ a mile from this other vessel;
149 I saw the capt. of the vessel in this suit ashore every day, except when so blowy we could not get ashore; it was ten days we could not get ashore; there was part of the time delayed us, because we could not get men to work from shore; about ten days of that time we laid there, we were so delayed in consequence of inability to get men to work; it appears the people, mechanics, were on a strike, and the bosses, carpenter, would not at first concede to it; the first three or four days they were all on a
150 spree, and could not be got to work; it was carnival time; it would take twelve to fourteen days to make her topmasts, jib-boom, and flying jib-boom; it would take 8 days to make them if all made together.

Q. With men enough to work how long would it take, if hurried, to make one topmast?

A. Two days.

Q. Which would take longest, a jib-boom or topmast, to make?

A. About the same.

On the voyages on which I was with fruit, we took it in where it was shipped, and landed it at its destination; I never
151 made any inquiry about a vessel for New York at Lisbon; I do not know whether the capt. of this vessel made any inquiries for a vessel for new York; never have been in the fruit business.

Re-direct: Q. How many ship-carpenters were there in Lisbon when you were there, and how many men did they severally employ?

Ans. There were three boss carpenters in Lisbon at that time; one of them had about seventy, another about twenty, and the other about fifty or sixty.

152 Ques. How many vessels were there lying at Lisbon while you were there which were undergoing repairs?

Ans. Thirty-eight; I have counted them myself; they had all put in there in distress.

Ques. Were, or not, all these vessels then undergoing repairs?

Ans. Yes.

Ques. Was it or not difficult to find men to make repairs?

Ans. Of course, very difficult.

Ques. Did the ten days' delay, referred to in your cross-examination, include holydays?

Ans. They were wet weather—stormy and bad.

Q. Beyond these ten days were you delayed by holy-
153 days?

Ans. Yes, it was carnival season; every week there were two or three holydays; they never worked Fridays or Saturdays, and sometimes three days in the week they did not work.

Re-cross: The other vessels, some lost masts, some leaked, some

lost men, all undergoing repairs while I was there; were 24 and over when I arrived; no wharf or place to lay at; all vessels take in cargo from stream, and discharge from stream; my re-
154 pairs were all done by persons from shore; I discharged about half my cargo before I commenced repairs; it took four days to discharge my cargo; that was, steady one day after the other; it commenced discharging on the 26th and ended on the 30th; then, after the cargo was out, we had another survey; we commenced our repairs after the second survey; the second survey was next day after discharge of our cargo; then we went to work on the same day, as the surveyors came aboard the second
155 day; we then went to work repairing stanchions by the carpenters from shore; after the loss of the three men we had five left, all told.

J. SMIDT PETERSEN.

Sworn this 23d day of June, 1836, before me.

ROB. W. ANDREWS,
Com'r of Deeds.

Endorsed: (3.) U. S. district court. John S. Lawrence vs. Brig Lieut. Admiral Collenberg, &c. Deposition of E. S. Petersen, taken de bene esse, for cl'ts. Owen & Vose, cl'ts' proct's.

U. S. District Court.

JOHN DENBREENS and als.
vs.
JOHN S. LAWRENCE.

THE BRIG LIEUT. AD. COLLENBURG, &c.
ads.
JOHN S. LAWRENCE.

Deposition of George Rickmers, taken de bene esse on behalf
156 of the brig Lieut. Ad. Collenberg and owners, to be used on the trial and other proceedings in the above entitled actions.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

George Rickmers, being duly sworn, says: I reside inthe city of Brooklyn; I am master of the bark "St. Andrew," now lying in this port; I am not acquainted with John S. Lawrence; I have seen the brig Lieut. Ad. Collenberg, and knew her captain,
157 Peter L. Schip. In the middle of December, 1855, I arrived in the port of Lisbon, in the bark St. Andrew, of which I was then in command; my vessel was leaking and required repairs; I remained there until the 7th of April repairing the vessel. About a fortnight after my arrival at Lisbon, the Lieut. Ad.

Collenberg, Capt. Schip, arrived; she had lost her topmasts; her sails split and torn; I was on board of that vessel twice while she was there. At the time she arrived there were about twenty
158 vessels in port requiring repairs; during the time she lay there, there was once twenty-five vessels there requiring repairs; she sailed about a fortnight before I did. Lisbon is a bad place for repairing vessels; it is an open roadstead. There is always a strong tide running, and when it is bad weather no boats can communicate with the shore from the vessels, which have to lie at anchor about a mile from the beach. The weather was generally bad while we lay there. It took a long time to do re-
159 pairs there, because there were so many vessels there in distress, and there were not many carpenters to do the work. The carpenters did not work steadily; once they struck for higher wages, and would not work for five or six days; and they worked very slow all the time; they worked in all weathers, except when it rained, and it stormed and rained very much.

Q. Did you get your vessel away as soon as you could? (Obj'd to.)

A. Yes, sir.

Q. Do you know whether the repairs to the Collenberg
160 proceeded rapidly or slowly? (Obj'd to.)

A. I don't know much about it.

Cross: The hull of my vessel was leaking, and we had to discharge cargo to get at the leak; we had a survey, and were ordered to do so; we discharged all our cargo; we laid two days in quarantine, and the day after that we had the survey, and the next day we commenced discharging, which occupied almost three weeks; then we had another survey; we hove her down.
161 Lisbon is on the river Tagus; we lay in the middle of the river; we had to heave down each side, which took about four days each side; we lost no spars; we took the topmasts down to heave her over; we took the copper off; caulked her and new coppered her; we strengthened her and overhauled her; our cargo was iron. I mean, by a mile from the beach, that we lay in the river about a mile from the shore, as near the beach as we could prudently get; the four days on each side included the time
162 occupied in heaving her down, stripping her, caulking, and recoppering.

G. RICKMERS.

Sworn before me, this 22d day of Nov., 1856.

JOHN G. VOSE,

[SEAL.] *Notary Public.*

Endorsed: (4.) U. S. District Court. John Denbreens and als. vs. John S. Lawrence. Deposition of Geo. Rickmers taken de bene for liblts. Owen & Vose, lbts.' proct's.

Due service of a copy of within deposition admitted Nov. 24, 1856.

BEEBE, DEAN, & DONOHUE,
163 *Att'ys for Def't.*

The President of the United States of America to the Consul of the United States at Lisbon, in the Kingdom of Portugal, greeting:

Know be, that we, in confidence of your prudence and fidelity, have appointed you commissioner, and by these presents do give you full power and authority, diligently to examine upon their corporal oaths, or affirmations, before you to be taken, and upon the interrogatories and cross-interrogatories hereunto annexed, such person or persons as may be produced before you by
164 the owners of the brig "Lieutenant Admiral Collenberg" as witnesses on the part of the claimants, in a certain cause now pending undetermined in the district court of the United States of America for the southern district of New York, between John S. Lawrence, libellant, and the brig "Lieutenant Admiral Collenburg," her tackle, &c., John Denbreens, Ira Denbreens, and Martin Denbreens, claimants, and P. L. Schep.

165 And we do further empower you to examine on the same behalf, and in like manner, any other person or persons who may be produced as witnesses before you; and we do hereby require you, before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hands and seals, directed to Owen & Vose, esqrs., No. 72 Wall street, at the city of New York, as soon as may be convenient after the execution of this commission, and that you return the same when executed, by mail, as above directed, with the title of the cause endorsed on the envelope of the commission.

Witness the Honorable Samuel R. Betts, judge of the
166 district court of the United States for the southern district of New York, at the city of New York, this twenty-seventh day of November, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the eighty-first.

GEO. F. BETTS, [SEAL.]
Clerk of the District Court of the United States for the Southern District of New York.

OWEN & VOSE,
Claim'ts' Proct's.

The execution of this commission appears in certain schedules hereunto annexed.

C. A. MUNRO,
Com'r, Deputy Consul U. S. A.

Instructions to Commissioners.

Annexed to the commission is an extract from the statutes
167 of the State of New York, relative to the taking of testimony out of the State, which extract is directed by law to be annexed to the commission. But as it does not comprise everything necessary to be attended to by the commissioners, they are requested to observe the following more ample instructions:

I. All the commissioners named in the commission should have notice of the time and place of executing it; and if any of them do not act, let the fact that they were notified, or could not
168 be notified, and the reasons for their not acting, be stated.

II. The commission must be executed by , the commissioner named therein.

III. The acting commissioner will examine the witnesses separately, after publicly administering to them the following oath or affirmation:

"You do swear, that the answers which shall be given by you to the interrogatories proposed to you, shall be the truth, the whole truth, and nothing but the truth. So help you God."

The oath shall be administered (except in cases hereinafter mentioned) by the witness laying his hand upon and kissing
169 the gospels.

But, if the witness shall desire it, he shall be permitted to swear in the following form:

"You do swear in the presence of the ever living God;" and while so swearing he may or may not hold up his hand, in his discretion.

Or, if the witness shall declare that he has conscientious scruples against taking an oath, or swearing in any form, he shall be permitted to make his affirmation in the following form:

"You do solemnly, sincerely, and truly declare and affirm," omitting the words "So help you God."

IV. The general style or title of the depositions must be drawn up in the following manner:

"Deposition of witnesses produced, sworn, (or affirmed,) and examined the day of in the year one thousand
170 eight hundred and at under and by virtue of a commission issued out of the district court of the United States for the southern district of New York, in a certain cause therein depending and at issue between John S. Lawrence, libellant, and the brig "Lieutenant Admiral Collenberg," her tackle, &c., John Denbreens, Ira Denbreens, and Martin Denbreens, claimants, and P. L. Schep, as follows:

A. B., of (insert his place of residence and occupation)
171 aged years and upwards, being duly and publicly sworn (or affirmed) pursuant to the directions hereto annexed, and

examined on the part of the doth depose and say as follows:

First. To the first interrogatory he saith, &c. [Insert the witness's answer.]

Second. To the second interrogatory he saith, &c., and so on throughout.

If he cannot answer, let him say that he knoweth not.

V. If there be any cross-interrogatories, the witness will go on thus:

First. To the first cross-interrogatory he saith, &c., and so on throughout.

VI. When the witness has finished his deposition, let him subscribe it, and the acting commissioner will certify as follows:

172 Examination taken, reduced to writing, and by the witness subscribed and sworn to, this day of , 18 , before—

Commissioner.

VII. If any papers or exhibits are produced and proved, they must be annexed to the depositions in which they are referred to, and be subscribed by the witness, and be endorsed by the acting commissioners, in this manner:

"At the execution of a commission for the examination of witnesses, between defendant, this paper writing was produced and shown to (insert the witness's name) and by him deposed unto, at the time of his examination, before—

173 *Commissioner.*"

VIII. The acting commissioners will sign their names to each half sheet of the depositions and exhibits.

IX. If an interpreter is employed, one of the commissioners will administer to him the following oath, and certify thereto:

"You do solemnly swear, that you will truly and faithfully interpret the oath and interrogatories to be administered to , a witness now to be examined, out of the English language into the language, and that you will truly and faithfully interpret the answers of the said thereto, out of the into the English language."

Let the depositions be subscribed by the interpreter as

174 well as by witness, and certified by the acting commissioners as follows:

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness, this day of , 18 , before—

Commissioner.

X. The commissioner will make return on the back of the commission by endorsement thus:

"The execution of this commission appears in certain schedules hereunto annexed."

Commissioner.

XI. The depositions and exhibits (if any) must be annexed to the commission, and then the commission, the directions, the interrogatories, cross-interrogatories, depositions, and exhibits must be folded into a packet and bound with tape. The acting commissioners are to set their seals at the several meetings or crossings of the tape, endorse their names on the outside, and direct it thus:

To Owen & Vose, esquires, No. 72 Wall street, New York city.

XII. When the commission is thus executed, made up and directed, it must be returned in the manner specified in the direction of the commission, if there be any.

XIII. If there be no direction on the commission specifying the manner in which it is to be returned, then it must either be delivered to the court by one of the acting commissioners personally, or else be forwarded by some person coming to this place, and who must be liable, on his arrival, to make oath, before one of the judges or the clerk of the court:

"That he received the same from the hands of A B, one of the commissioners, and that it had not been opened or altered since he so received it."

XIV. In case of returning the commission by mail, it is to be deposited by one of the acting commissioners in the nearest post-office, he making the following endorsement thereon:

"Deposited in the post office, at , this day of , 18 , by me.

Commissioner.

In case of returning the commission by a vessel, it is to be deposited by one of the acting commissioners in the letter-bag of such vessel, he making upon the commission the following endorsement:

"Deposited in the letter-bag of the now lying at and bound for the port of New York, this day of 18 , by me.

Commissioner."

The commissioners are requested to be very careful to observe the foregoing instructions, as the smallest variance may vitiate the execution of the commission.

If the commission be returned by an agent, let him be instructed to call, on his arrival at this place, upon Owen & Vose, 72 Wall street, who will direct him as to its delivery.

Interrogatories to be administered to the several witnesses who may be produced and examined on the part of the brig Lieutenant Admiral Collenberg, under and by virtue of the commission for that purpose issued and hereto annexed in the action therein mentioned.

178 First interrogatory. What is you name, age, residence, and occupation?

Second interrogatory. Have you ever seen the brig Lieutenant Admiral Collenberg? Was she in the port of Lisbon in December, 1855, or January, 1856? To whom was she consigned? State as nearly as you can when she arrived at that port, and whether or not she arrived there in distress; when she sailed from thence, and where she was bound to.

Third interrogatory. What cargo had the brig? If you
179 say she had, amongst other things, lemons and oranges, then state whether the same were examined or surveyed while on board the ship; if so, state who were the surveyors, and also what the surveyors recommended to be done with them. State whether or not such lemons and oranges, or any part thereof, were discharged while the vessel lay in port; where they were stored or placed; describe the building, and state if it was a suitable and proper place in which to store oranges and lemons, under
180 the circumstances in which these were found.

Fourth interrogatory. Were the boxes of oranges and lemons opened; if so, by whom, and for what purpose were they opened? If you say they were discharged and opened in order to pick or assort them, and thus separate the unsound and decayed from those which were sound, then state whether, in your judgment, it was necessary so to do, and what would have been the effect upon the sound lemons and oranges if they had not been so picked over. Was it or not necessary for their preservation
181 that they should have been thus assorted and picked over? Were there any rotten or decayed lemons and oranges; if so, about how many, or what proportion of them, were so rotten or decayed, and in process of decay?

Fifth interrogatory. What was done with the sound oranges and lemons? If you say they were repacked in bokes, then state by whom they were so repacked; then state also whether the persons who did the work were accustomed to pack or repack oranges and lemons in boxes for shipment, and understood the work;
182 and also state whether the lemons and oranges in question were properly repacked. State what care was used in such repacking, and whether they were placed in layers, as is usual in packing oranges and lemons, or how otherwise.

Sixth interrogatory. Were you, or the persons who assorted and repacked such oranges and lemons, engaged in the business of buying, selling, shipping, packing, assorting, and repacking oranges

and lemons? If so, state how extensively you had care over such business. State also whether or not, in your opinion, the
183 oranges and lemons would have sustained greater damage from decay if they had remained in the hold of the vessel while she was undergoing repairs. Did you survey or examine them before they were discharged? Did you, or who in particular, advise or recommend that the oranges and lemons should be discharged and placed in store, and then picked over, and the rotten and decayed cast out? State fully what you know upon this subject, and whether or not anything could have been done to
184 save the oranges and lemons beyond what was done.

Seventh interrogatory. Who paid the ship's expenses while in port? Who paid for making repairs, storing the oranges and lemons, and assorting and repacking the same; if you, or either of you, say that you did, then please annex a copy of your account rendered to the ship; and state whether or not the same is correct, and whether or not the same has been paid?

Last interrogatory. Do you know, or can you state, any other matter or thing concerning the care, custody, picking over,
185 repacking and preservation of the aforesaid oranges and lemons beyond what you have been interrogated unto; if so, declare the same fully, as if particularly interrogated thereunto.

OWEN & VOSE,
Cl'ts' Proct's.

Endorsed: U. S. district court. The Brig Lieut. Ad. Collenberg, &c., ads. Lawrence. Interrogatories. Owen & Vose, att'ys.

Cross-interrogatories to be administered to the several witnesses who may may be produced and examined on the part of the brig "Lieutenant Admiral Collenberg," under and by virtue of the commission for that purpose issued and hereto annexed in
186 the action therein mentioned.

First cross-interrogatory. Did you ever see the brig mentioned on your direct-examination; if yea, when did you first see her; where did she lie; how often did you see her; on what days, and what was doing on board each day you saw her? state fully. Do you know, of your own knowledge, where the vessel came from, or where she was bound? Do you know in any other way than from hearsay?

Second cross-interrogatory. Did you see any cargo on board the brig; what part of the brig was it in; in what condition
187 was the hull and deck of the vessel; were or not the hatches all right, tight, and fastened when she arrived, and when you first saw her; were you present when any survey was made on the cargo; where was the cargo? If you state the cargo was stored,

answer if you saw where was said cargo stowed; describe the place of storage?

Third cross-interrogatory. State the appearance of the outside of the boxes. Did you ever know of a cargo being taken out of a vessel, picked over and repacked? if yea, state the cargo or cargoes, vessel or vessels in which they were, and the circum-
188 stances of it. State what is the effect of rehandling and shipping lemons and oranges; does it not tend to decay them?

Fourth cross-interrogatory. Were said boxes packed in the original boxes? Do you know how many were in each old box, and how many were put in each on repacking? State the numbers, not estimate. Did you count them? Were not the new fuller than the old?

Fifth cross-interrogatory. Did you ever repack a cargo of
189 oranges or lemons? if yea, state the vessel, voyage, and circumstances.

Sixth. Do you know, of your own knowledge, the matters stated in the answer to the seventh direct interrogatory? if yea, which of them?

Seventh. Do you know of any other matter, cause or thing touching the matters in controversy in this action which may tend to the benefit or advantage of John S. Lawrence? if yea, state the same as fully and at large as if particularly interrogated thereto.

BEEBE & DONOHUE,
Proctors for John S. Lawrence.

Endorsed: U. S. district court. John S. Lawrence vs.
190 The Brig Lieut. Admiral Collenberg. Copy cross-interrogatories. Beebe & Donohue, Proctors. To Owen & Vose, esqs.

Endorsed: U. S. district court. The Brig Lieutenant Admiral Collenburg, &c. ads. John S. Lawrence. Commission. Owen & Vose, clm'ts' proct's.

Depositions of witnesses produced, sworn and examined, the twentieth day of April, in the year one thousand eight hundred and fifty-eight at Lisbon, under and by virtue of a commission issued out of the district court of the United States for the
191 southern district of New York, in a certain cause therein depending and at issue between John S. Lawrence, libellant, and the brig "Lieutenant Admiral Collenberg," her tackle, &c., John Denbreens, Ira Denbreens and Martin Denbreens, claimants, and P. L. Schep, as follows:

William Adam. of Lisbon, fruit merchant, aged fifty-four years and upwards, being duly and publicly sworn, pursuant to the directions hereunto annexed, and examined on the part of claimants, doth depose and say as follows:

First. To the first interrogatory he saith: His name is
192 William Adam, aged fifty-four years and upwards; resides in Lisbon, and is a fruit merchant.

Second. To the second interrogatory he saith: Saw the brig Lieutenant Admiral Collenburg in the port of Lisbon, in January, 1856. She was consigned to Messrs. George Seidel & Silva. She arrived in Lisbon about 18th January. The captain reported that the vessel required repairs. She sailed from Lisbon about the 1st of March.

Third. To the third interrogatory he saith: He cannot say what the whole cargo consisted of; part was lemons and
193 oranges. They were examined, as it could only be effected on board by having several boxes taken out of different parts of the hold and opened on deck. The surveyors were Mr. F. Martin and himself. The surveyors recommended, in order that the fruit might be better ventilated and more effectually examined, that it should be discharged and put into a store. It was all discharged and put into a warehouse at the Caés de Joze Antonio Pe-
194 reira; the building is a corner building with three fronts, and a proper place to store fruit, under the circumstances in which the lemons and oranges were.

Fourth. To the fourth interrogatory he saith: The boxes were opened by persons brought up in the trade, for the purpose of having the rotten and decayed fruit separated from the sound. In deponent's judgment this step was necessary; the effect upon the sound, if left amongst the rotten, would have been their getting rotten also. The rotten fruit was not counted; the proportion of such decayed fruit can only be estimated by the number of boxes
195 which remained empty after the fruit was repacked.

Fifth. To the fifth interrogatory he saith: The fruit was all repacked in boxes by the persons who opened the boxes; these persons were fully accustomed to pack oranges and lemons for shipment. The fruit was properly repacked. Care was taken in removing the fruit from the boxes, so that it might not get bruised. It was packed in layers, in the usual manner.

Sixth. To the sixth interrogatory he saith: He is a fruit
196 merchant, and purchases fruit on the trees. The persons who repacked the fruit were brought up to the business of packing fruit and making up boxes. In his opinion the fruit would have sustained greater damage if it had remained in the hold of the vessel during the time she was undergoing repairs. Deponent surveyed and examined the fruit before it was discharged. Deponent and Mr. F. Martin recommended that the fruit should be discharged, and placed in store, and, on a second survey, recommended that the boxes should be emptied, and the rotten
197 fruit separated from the sound. Nothing in deponent's opinion could have been done, for the better preservation of the fruit, beyond what was recommended.

Seventh. To the seventh interrogatory he saith: He knoweth not.

Eighth. To the eighth interrogatory he saith: He knoweth not.

Cross-interrogatories.

First. To the first cross-interrogatory he saith: He saw the brig on the 30th of January, 1856; she was lying in the river Tagus, opposite the city; went on board of her only once; paid no
198 attention to what was doing on board; the vessel is entered at the custom-house as having come from Palermo, and bound to New York.

Second. To the second cross-interrogatory he saith: Saw boxes containing fruit on board; they were stowed on the top of other cargo; paid no attention to the hull or deck of the vessel. The hatches were open when deponent saw the boxes; was one of the surveyors on the fruit. The fruit was on board, stowed as above stated.

Third. To the third cross-interrogatory he saith: Did
199 not observe anything particular with regard to the outside of the boxes; does not know of any cargo of fruit having been repacked; has frequently been obliged to repack parcels of fruit, in consequence of the boxes having got wet on being brought from the gardens to the store, but has never found any bad consequences resulting from it.

Fourth. To the fourth cross-interrogatory he saith: The fruit was packed in the original boxes; doth not know how many each box contained before nor after they were repacked; did not
200 count them; cannot say whether the new were fuller than the old.

Fifth. To the fifth cross-interrogatory he saith: Never did repack a cargo of oranges or lemons.

Sixth. To the sixth cross-interrogatory he saith: Knoweth not.

Seventh. To the seventh cross-interrogatory he saith: He knoweth nothing further in the matter.

WM. ADAM.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this twentieth day of April, 1858, before me.

[SEAL.] C. A. MUNROE, *Commissioner,*
201 *Deputy Consul U. S. A.*

Francis Martin, of Lisbon, fruit merchant, aged fifty-nine years, and upwards, being duly and publicly sworn, pursuant to the directions hereunto annexed, and examined on the part of claimants, doth depose and say as follows, viz:

First. To the first interrogatory he saith: His name is Francis

Martin; aged fifty-nine years; resides on Travessa da Parreirenha No. 5, in the city of Lisbon; is a fruit merchant.

Second. To the second interrogatory he saith: Remembers seeing the brig Admiral Collenberg in Lisbon, about January,
202 1856; she was consigned to Messrs. Seidel & Silva; thinks she arrived about the middle of January. The captain declared that the vessel required some repairs; she left Lisbon six or eight weeks after her arrival; heard say that she was bound to New York.

Third. To the third interrogatory he saith: Doth not know what the whole cargo of the brig consisted of, but part thereof was lemons and oranges; these were examined and surveyed on board
203 the brig, by having several boxes taken out of different parts of the hold, and opened on deck; the surveyors were Mr. William Adam and the deponent; recommended that the fruit should be discharged and put into store, in order to be ventilated, and more effectually examined; it was all discharged and stored in a warehouse at the Caés de Joze Antonio Pereira; this store is a corner building with three fronts, stone and mortar built, well aired, and in every respect a proper place for such
204 effects, and under the circumstances in which the lemons and oranges were.

Fourth. To the fourth interrogatory he saith: The boxes of oranges and lemons were all opened by workmen regularly brought up in the fruit trade, and this was done in order to have the rotten and decayed fruit separated from that which was sound. In deponent's judgment, such operation was absolutely necessary, for if the rotten and decayed fruit had been left among the sound, the effect would have been, the latter getting rotten like-
205 wise; believes the rotten fruit was not counted; the proportion of the decayed fruit could only be estimated by the number of boxes which were left empty after the sound fruit was repacked.

Fifth. To the fifth interrogatory he saith: The sound fruit was repacked in boxes by the workmen who opened them; they were men well accustomed to pack oragnges and lemons for shipment, and the fruit was properly packed; every care seemed to have been taken in removing the fruit from the boxes, so that it might not
206 get any further damage, and it was repacked in layers, as it is usual to do here.

Sixth. To the sixth interrogatory he saith: Is a fruit merchant, and as such, is in the regular habit of purchasing fruit on the trees; the men who repacked the fruit were regularly brought up to the business of packing fruit and making up boxes. In deponent's opinion the fruit would certainly have sustained much greater damage if it had been left in the hold of the vessel whilst she was undergoing repairs. Surveyed and examined the boxes

207 in the manner stated, before they were discharged. Deponent and Mr. W. Adam recommended that the fruit should be discharged and placed in store, and on a second survey on shore, recommended that the boxes should be emptied, and the rotten fruit separated from the sound. In deponent's opinion nothing else could have been done for the better preservation of the fruit beyond what was recommended by the surveyors.

Seventh. To the seventh interrogatory he saith: Cannot say who paid the various expenses on the affair; presumes it
208 must have been the consignees.

Eighth. To the eighth interrogatory he saith: He knoweth not.

Cross-interrogatories.

First. To the first cross-interrogatory he saith: Saw the brig for the first time on 30th January, 1856; she was lying at anchor on the regular mooring ground in the Tagus, opposite the city; went only once on board of her; paid no particular attention to what was going on on board beyond the business which called him there; the vessel was entered in the custom-house and in the
209 usual public reports as having come from Palermo, and was bound to New York.

Second. To the second cross-interrogatory he saith: Saw the boxes containing the fruit on board; they were stowed on the top of other cargo, near the hatches; paid no attention to the condition of the hull and deck of the vessel; when deponent went on board the hatches were already open; was one of the surveyors on the fruit; the fruit was on board, stowed in the manner above stated.

Third. To the third cross-interrogatory he saith: Nothing
210 particular was observed as to the outside of the boxes; does not remember of any cargo of fruit having been taken out, picked over, and repacked; has often, in the course of his business, been obliged to repack parcels of fruit, in consequence of the boxes having got wet on coming in from the gardens to his stores; never found any bad consequences to arise from this operation.

Fourth. To the fourth cross-interrogatory he saith: The original boxes were used in repacking the fruit, as far as he can remem-
211 ber; doth not know how many oranges or lemons each box contained before or after the repacking; did not count them; cannot say whether the new were fuller than the old.

Fifth. To the fifth cross-interrogatory he saith: He knoweth not.

Sixth. To the sixth cross-interrogatory he saith: He knoweth not.

Seventh. To the seventh cross-interrogatory he saith: He knoweth not.

FRANCIS MARTIN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this twentieth day of April, 1858, before me.

C. A. MUNROE,

212 *Commissioner, Deputy Consul U. S. A.*

George Seidel, of Lisbon, merchant, aged 73 years and upwards, being duly and publicly sworn, pursuant to the directions hereunto annexed, and examined on the part of claimants, doth depose and say as follows, viz:

First. To the first interrogatory he saith: His name is George Seidel; seventy-three years of age; residing in Rua Nova de S. Mamede, No. 10, in Lisbon; is chief of the firm of George Seidel & Silva, merchants.

Second. To the second interrogatory he saith: He went
213 on board the brig Lieutenant Admiral Collenberg on the 17th of January, 1856, when she came to an anchor off the Boa Vista, having come over the bar on the 16th January, and came in in distress, on its voyage from Palermo to New York, the master having consigned his vessel to deponent's firm; the brig sailed from Lisbon on the fourth of March, 1856, on her voyage to New York.

Third. To the third interrogatory he saith: The cargo was composed of different merchandise, and 2,850 boxes of oranges
214 and lemons, as per manifest; and the master having requested his consul to appoint proper surveyors to examine the state of said fruit, Mr. Francis Martin and Mr. William Adam, merchants of this city, and exporters of fruit, (oranges, lemons, &c.,) were named by him to this effect. The oranges and lemons were examined on board, several boxes having been taken out of the hold, and opened to this effect. The surveyors then recommended all the boxes of oranges and lemons to be landed; the vessel remained anchored at the same place; the 2,850 boxes
215 of oranges and lemons were landed into one of the best warehouses at the Tercenas, at Caés de Joze Antonio Pereira, which deponent chose out, having first and second floor, with windows on three sides, very well ventilated and dry, perfectly appropriated for fruit, and the windows remained open day and night, having iron bars outside to avoid communication through the same into the said warehouse.

Fourth. To the fourth interrogatory he saith: The surveyors examined the fruit again, and recommended that the boxes of oranges and lemons should be opened, to separate the
216 sound from the rotten fruit, which was done by competent persons. Deponent is convinced that this operation was very necessary, and if it had not been done, the fruit would have been entirely lost in a very short time. There was a great quantity of rotten and decayed oranges and lemons in the boxes; however, they could not be counted, because they were

chiefly reduced to a mass of rotten fruit and paper, but it could be guessed at by the 414 empty boxes that were sent on board.

217 Fifth. To the fifth interrogatory he saith: The sound oranges and lemons were repacked in boxes by men who do nothing else than handle and pack fruit of this country for exportation, and have great experience in this work. The oranges and lemons were very well and properly put into boxes, having been previously wrapped in new paper and duly stowed in tiers.

Sixth. To the sixth interrogatory he saith: The men who picked and sorted the fruit do not buy or sell fruit; they are workmen only, and do nothing else but work with fruit. Deponent's opinion is, that if the oranges and lemons had

218 remained on board the vessel whilst she was undergoing the necessary repairs, they would have got ruined much more and quicker. Deponent did not survey the fruit, but had many opportunities of seeing how the work was done. Did not recommend the boxes of fruit to be landed and repacked, separating the sound from the rotten, but would have done so if the cargo had belonged to him. Did not give any opinion, as deponent was not consulted; however, as a fruit merchant, approves of every-

219 thing that was done, as it was the best that could have been done on behalf of the owners of the oranges and lemons.

Seventh. To the seventh interrogatory he saith: Deponent's firm paid all the expenses incurred by the vessel, as well as warehouse rent, picking and packing of the oranges and lemons, &c. All the receipted accounts, legalized by the consul of the United States, were delivered by deponent to the captain of the brig, who took them with him. Deponent hands a copy of his account, which he declares to be correct and true. (Exhibit herewith,

220 No. 1.)—[See p. 55, fo. 256.]

Eighth. To the eighth interrogatory he saith: Cannot say anything more about the care that was taken in this work, which was done with the greatest zeal for the interests of the owners, by proper and experienced men, both as to the workmen and as to the person who superintended the work, not to mention the deponent's self, who, as consignee of the vessel, had the greatest wish that everything should be arranged in the best possible way; and to this end deponent went frequently to the warehouse

221 where the fruit was stored. Deponent further declares that everything was done under the superintendence of the Lisbon custom-house guards, on board the vessel, in the warehouse, and during the landing and reshipping of the fruit.

Cross-interrogatories.

First. To the first cross-interrogatory he saith: He saw and went on board the brig immediately she came to an anchor off the Boa Vista, on the seventeenth of January, 1856, and afterwards went

often on board, whenever deponent wanted to speak to the captain;
saw every time deponent was on board that the sailors and
222 other people were constantly at work to hasten the repairs,
and the captain doing his utmost—say doing his utmost—to get ready as soon as possible to continue his voyage. Went on board on the 22d of January, 1856, when the surveyors appointed by the consul general of the Netherlands went to examine the average sustained by the vessel. Went on board on the 30th of same month, when the surveyors appointed by said consul general went
to examine the boxes of oranges and lemons. Also went on
223 board when the fruit was landed, and when it was reshipped.
By the ship's papers, which deponent saw, can affirm that there was no doubt that the vessel came from Palermo, and was bound to New York.

Second. To the second cross-interrogatory he saith: Saw very well that the vessel had boxes of fruit on board on the day of its arrival, because the hatchways, that had an ingenious arrangement to ventilate the cargo, allowed deponent to see the boxes in the hold. There was other cargo in the hold, such as brimstone, &c. Knoweth not if the hull and deck of the vessel were
224 in a good state; all the hatches were open, having boards
round them in the shape of a box, with lids, to impede the sea or rain water entering the same, and have a continual ventilation on the cargo; and as deponent observed this arrangement, (new to him,) the captain told him that he had ordered these boxes to be made on purpose for the cargo to be sheltered from the rain and sea water, and to have air. Saw the vessel immediately she
came to an anchor; was present when the survey was held
225 on the oranges and lemons. The fruit was on the top of
the other cargo which the vessel had on board. The boxes of oranges and lemons were landed into a warehouse with first and second floors, at the Tercenas; it is very large, well ventilated, with windows on three sides, always open, having iron bars to prevent communication to the same.

Third. To the third cross-interrogatory he saith: Did not take notice of the exterior appearance of the boxes; doth not know of any other cargo of fruit being taken out of a vessel to be picked
and repacked. The effect of picking the rotten from the
226 sound fruit is the best possible, as it saves the latter from
decaying, and this is always done when fruit is in identical circumstances.

Fourth. To the fourth cross-interrogatory he saith: The oranges and lemons were repacked in the same boxes, choosing the dry ones, the said fruit having been wrapped in new paper; doth not know how much fruit was in the boxes when they were opened, nor when they were repacked; did not count them; the boxes of

fruit that were reshipped on board the brig were full, and could not go fuller than they originally were.

227 Fifth. To the fifth cross-interrogatory he saith: Never had a cargo repacked, but it is the custom here, when the boxes of oranges and lemons of this country are detained by any circumstance, and have decayed fruit in them, to open them and pick out the decayed or rotten fruit, repacking the sound in the boxes; this being the only way of saving the remainder.

Sixth. To the sixth cross-interrogatory he saith: As consignees of the vessel, deponent's firm paid all the accounts of the brig and of the fruit which they have already received.

228 Seventh. To the seventh and last cross-interrogatory he saith: He knoweth nothing else; everything was done with the greatest zeal and economy on behalf of the parties interested, and under the superintendence of the Lisbon custom-house.

GEORGE SEIDEL.

C. F. J. HUTCHENS.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, and by the sworn interpreter, this tenth day of June, 1858, before me.

[SEAL.] C. A. MUNROE,
Commissioner, Deputy Consul U. S. A.

I, the undersigned, deputy consul of the United States of America at Lisbon, and commissioner named for examining witnesses in the annexed commission, do hereby certify that I have

229 administered unto Charles Francis John Hutchins the oath as per foregoing instructions, to act as interpreter on the examination of the witnesses, George Seidel, Joze da Silva Valgas and Domingos Perez dos Santos, whose depositions are hereunto annexed.

{United States Consulate Seal, Lisbon.} In witness whereof I hereunto annex my hand and seal, at Lisbon, this tenth day of June, A. D. 1858.

C. A. MUNROE,
Commissioner, Deputy Consul U. S. A.

Joze da Silva, Valga, aged 24 years and upwards, owner of lighters, residing in Rua de S. Joao dos Bem Cazados, in

230 Lisbon, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of claimants, doth depose and say as follows, viz:

First. To the first interrogatory he saith: His name is Joze da Silva Valgas, aged twenty-four years; owner of lighters, and residing at Rua de S. Joao dos Bem Cazados, in Lisbon.

Second. To the second interrogatory he saith: Saw the brig

Lieutenant Admiral Collenberg, and sent the lighters on board the same to unload the fruit; the brig was in Lisbon in
231 January, 1856, and came on or about the middle of said month; the consignees were George Seidel and Silva, of this city; understood that the vessel had put into this port in consequence of damage suffered at sea; sailed on or about the 4th or 5th of March, and deponent was told for North America.

Third. To the third interrogatory he saith: Recollects that the vessel had green fruit and brimstone on board, and doth not know what else; heard say that the oranges and lemons had been examined on board by surveyors, and understood them to have
232 been Mr. Francis Martin and Mr. William Adam, both merchants and exporters of fruit; and that they decided that the fruit should be landed to separate the decayed from the sound; knoweth that all the boxes of oranges and lemons were landed, as deponent superintended the landing of the same from the vessel anchored off the Boa Vista; knoweth that the said boxes of fruit were stored in a large warehouse at the Tercenas, at Caez de Jose Antonio Pereira, well ventilated with windows on three
233 sides, on first and second floors, where the north, south and east winds blew freely through the same.

Fourth. To the fourth interrogatory he saith: Knoweth that the boxes of oranges and lemons were opened to be repacked—say, to separate the rotten from the sound; knoweth, also, that the people employed in this work were the proper persons, as they are constantly employed in plucking and packing oranges and lemons in this country; as to the further particulars of this interroga-
234 tory, can only say that, as it is deponent's business to send fruit on board vessels on his lighters, knoweth that if, by any chance or circumstance, the fruit is detained on shore, the owners order the same sort of process to be performed to preserve the fruit; there was a great quantity of rotten oranges and lemons, which was taken in one of deponent's lighters, by order of the custom-house, to the proximity of the bar, and there thrown into the river during the ebb tide.

Fifth. To the fifth interrogatory he saith: Knoweth that the sound oranges and lemons were repacked and were sent
235 again, on his lighters, on board the vessel; knoweth that the picking and repacking of this fruit was done by competent persons who are accustomed to handle oranges and lemons in this country, being, besides, superintended by a clerk duly qualified and of great experience in this work.

Sixth. Can only say that the people employed in the picking of these oranges and lemons were men accustomed to do this work with green fruit of this country, and are constantly employed by the merchants and exporters of green fruit. They have not
236 got the means for doing the business on their own account, nor do they do it. When the shipment takes place, great

care is taken in not allowing the boxes of fruit to be lowered with violence, and in placing them conveniently, and to this effect the crews of the lighters are proper men accustomed to do this work. Cannot answer to the remainder of this interrogatory, as he knoweth not.

Seventh. To the seventh interrogatory he saith: Knoweth not who paid the ship's accounts. All he can say, is, that his account of lighterages, porterage for landing and reshipping, stow-
237 age, conducting officers, all amounting to rs. 166,840, was paid by the consignee of the vessel, according to deponent's receipt, whereof a copy is annexed, (Exhibit No. 2,) which deponent declareth to be true and correct. [See p. 56, fo. 262.]

Eighth. To the eighth and last interrogatory he saith: Doth not recollect anything else about this affair, and declareth that everything of which he had the management in this affair was effected with the greatest care, and in the best possible order.

Cross-interrogatories.

First. To the first cross-interrogatory he saith: Saw the
238 brig anchored off the Boa Vista, about the middle of January, 1856. Went on board several times, and saw every one at work about the ship. Understood that this vessel put in, in distress, coming from the Mediterranean.

Second. To the second cross-interrogatory he saith: Saw a great quantity of boxes of oranges and lemons in the hold of the vessel on the top of other cargo. Knoweth nothing about the hull or deck of the vessel. The hatchways were not closed, but open, to keep the fruit well aired, and had boards nailed round them
239 to avoid sea-water entering through the same into the hold. When the first survey was held on the fruit, deponent was not present, but sent his lighters on board after the surveyors had declared that the fruit was to be landed, and then saw that the fruit had been properly and well stowed in the hold of the brig, on the top of the other cargo, with small pieces of wood between every box, to avoid their touching each other. The boxes of oranges and lemons were taken in deponent's lighters to the store.

Third. To the third cross-interrogatory he saith: Did not
240 take notice of the outside appearance of the boxes. Knoweth not of any vessel having put into this port in distress with a cargo of fruit on board. In consequence of the situation deponent holds, hath had opportunities of knowing that very often, when boxes of oranges and lemons have been detained in the warehouse, and that when there is any suspicion of rottenness existing in the same, they are opened, the decayed fruit separated, and the sound fruit repacked; this is done to avoid the rot communicating to the sound.

Fourth. To the fourth cross-interrogatory he saith: Know-
241 eth not.

Fifth. To the fifth cross-interrogatory he saith: He knoweth not.

Sixth. To the sixth cross-interrogatory he saith: Knoweth not who paid the ship's accounts. The expense of lighterage for landing and reshipping the boxes of oranges and lemons, custom-house guards, &c., was paid by the consignees of the vessel, George Seidel and Silva. I declare my account a true and correct one.

Seventh. To the seventh and last cross-interrogatory he
242 saith: Hath nothing else to say; however, must add, that his part of the work was done with the greatest care, as well as what was done by the crew of the lighters, and the porters, accustomed to handle boxes of oranges and lemons in this country.

JOZE DA SILVA VALGA.

C. F. J. HUTCHENS.

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness, this twelfth day of June, 1858, before me.

C. A. MUNRO,
243 *Commissioner, Deputy Consul, U. S. A.*

{United States Consulate Seal, Lisbon.}

Domingos Peres dos Santos, clerk in the fruit trade, residing at Rua da Praia, No. 17, at Belem, aged thirty-one years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the claimants, doth depose and say, as follows, viz:

First. To the first interrogatory he saith: His name is Domingos Peres dos Santos; clerk in the fruit trade; is 31 years of age; and resides in Belem, at Rua da Praia, No. 17.

244 Second. To the second interrogatory he saith: Did not see the brig Lieutenant Admiral Collenburg, as his business is on shore, and was on that occasion out of Lisbon with a gang making up fruit. Understood that the vessel was consigned to George Seidel and Silva.

Third. To the third interrogatory he saith: Knoweth nothing about the vessel, as he was out in orange groves packing fruit when he was sent for by the consignees to repack a cargo of lemons and oranges, which had been landed into a warehouse at the Tercenas at Caes de José Antonio Pereira, on the first and
245 second floors of No. 17. This warehouse is large, dry, and well ventilated on three sides, and is excellent for green fruit. The boxes of fruit had been put in tiers in such a way (and not placed one against the other) that the air and wind might circulate freely between the same. Knoweth that the surveyors were Mr. Francis Martin and Mr. William Adam, both fruit merchants,

who decided that the cargo was to be picked, and these said gentlemen inspected the work.

246 To the fourth interrogatory he saith: Went, by order of the consignees of the vessel, with a gang of fruit-packers, who are in the habit of packing fruit, to the warehouse at the Tercenas, where the fruit was, and opened the boxes of fruit, to pick the rotten from the sound, according to what had been recommended by the surveyors; and deponent is of opinion that this ought to have been done, because the rotten and decayed oranges and lemons would have communicated their dampness to the sound fruit, that would thus also rot very quickly. This way of proceeding

247 is well known here in this country, and is always adopted when boxes of fruit are detained in the warehouses; they are examined before shipment; the rotten oranges and lemons are taken out, and the sound fruit is repacked in new paper in the boxes. There was a great quantity of rotten oranges and lemons, but cannot say how many.

Fifth. To the fifth interrogatory he saith: The sound oranges and lemons were repacked in the same boxes under deponent's superintendence, choosing the dry boxes, and wrapping the

248 fruit in new paper, placing it with great care in tiers, as it is customary to do. The men deponent had to do this work are specially employed in packing green fruit of this country for exportation.

Sixth. To the sixth interrogatory he saith: The men employed in repacking the said fruit under deponent's supervision do not deal in this article, nor do they buy or sell any, nor doth deponent; but they are merely employed by green-fruit merchants to pluck, paper, and pack oranges, lemons, and other fruit, for exportation; they take the greatest care how they handle the

249 fruit, not squeezing it, but placing it one by one in tiers, and not too tight; finally, the boxes went full, but not pressed, so that the fruit might not move in the boxes with the motion of the vessel. Is of opinion that if the fruit had not been examined and picked, separating the rotten and decayed from the sound, and if the said boxes of oranges and lemons had remained on board the vessel during the indispensable time to repair the same, the whole would have been rotten before the vessel had been fifteen days at sea; but picked as the fruit had been, it would have lasted

250 for a regular voyage; did not survey the fruit, nor ordered the same to be landed, or picked, but the surveyors did so; had every opportunity of examining the state of the fruit, as deponent superintended the work done with the same, and must say that on this occasion everything was done to try and save the said fruit, and nothing more could have been done.

Seventh. To the seventh interrogatory he saith: Knoweth not who paid the vessel's accounts; the expenses, with the picking, and all the others, up to the fruit being repacked in the boxes,

251 were paid by the consignees, George Seidel and Silva, as per deponent's receipts for rs. 161.940, whereof he herewith hands a copy, which he declareth to be true and correct. (Exhibit No. 3.) [See p. 57, fo. 267.]

Eighth. To the eighth interrogatory he saith: Knoweth nothing else, and only has to add that all the work done under his inspection was done with the greatest care to preserve the fruit.

Cross-interrogatories.

First. To the first cross-interrogatory he saith: Did not see the vessel.

Second. To the second cross-interrogatory he saith: Never
252 went on board the vessel; was sent for when the boxes of fruit were in the warehouse, which is a very good one for the effect, having windows on three sides, and being well ventilated; the boxes were placed in tiers, not leaning one against another.

Third. To the third cross-interrogatory he saith: Did not pay attention to the outside appearance of the boxes; doth not know if ever any cargo of fruit was landed from any vessel to be picked and repacked; the operation of separating the rotten and decayed,
253 and repacking the sound fruit, is necessary to preserve it, otherwise the rotten fruit would wet the sound, and this would very quickly get spoiled.

Fourth. To the fourth cross-interrogatory he saith: The fruit was newly papered and repacked in the same boxes, picking out the dry ones in good condition; the fruit was not counted when the boxes were opened, and after the separation of the sound from the rotten fruit, the boxes were filled with sound fruit in tiers well secured, but not pressed; cannot tell how much fruit each
254 box contained; the boxes could not be fuller than they must have been when shipped originally.

Fifth. To the fifth cross-interrogatory he saith: Never repacked a cargo of oranges or lemons, but it is the custom in this country to examine the boxes when there is any suspicion of there being any rotten or wet fruit in the same, and, in this case, the bad fruit is taken out, and the sound newly papered, as it is proved that this process is of great advantage to the fruit.

Sixth. To the sixth cross-interrogatory he saith: Knoweth
255 not who paid the vessel's expenses; the expenses incurred by the fruit were paid by Messrs. George Seidel & Silva; declareth his account to be correct and true.

Seventh. To the seventh and last cross-interrogatory he saith: Hath nothing else to say, only that the work done to benefit the oranges and lemons was done with great care, and at the same

time with the greatest possible rapidity, and did not omit anything recommended as useful to keep the said fruit sound.

DOMINGOS PIROZ DOS SANTOS.

C. F. J. HUTCHENS.

Examination taken, reduced to writing, subscribed by the
256 witness and by the sworn interpreter, and sworn to by the witness, this nineteenth day of June, 1858, before—

C. A. MONROE,
Commissioner, Deputy Consul U. S. A.

{United States Consulate Seal, Lisbon.}

Exhibit No. 1—C. A. M.

Generale Averg and On Kost rekening ten lasten van het Nederlandsch Brikschip "Lieutenant Admiraal Collenburg," Kaptien P. L. Scheep, en dezelfs Lading, gekomen van Palermo en bestemd naar New York op dem 16 January 11 door bekomene Zeeschade en deze haven bennen gekomen te weeten.

			Rs.
		Advys van de Aankonist . .	2.400
	No. 1.	Rekening van dun Scheepstimmerman	599.830
257	2.	Rekening van dun Zeilmaker .	109.000
	3.	Rekening van het Zeildock en den Towslager, Je. Ma. Gonsalves .	802.756
	4.	Rekening van den Towslager Anto. Abran	352.355
	5.	Rekening van den Blockmaker en het verf	67.440
	6.	Rekening van den Horlogiemaker .	21.750
	7.	Voor het reguleren van den Chronometer	4.020
	8.	Lossen en laden van de Fruit, Ligters, &c.	166.840
		Asswrantie premie tejen den Brand.	2.850
	9.	Werkmannen en toebehoren om de	
258		fruit overteizen en te verpakken .	161.940
	10.	Aan de Tolwagter voor aan wezigheid by het verpakken van de fruit .	20.400
		Aan den Greffier voor dienst op order van het Tolwezen . .	2.400
	11.	Magarquhuur	6.000
	12.	Rekening van de Proviant . .	189.190
	13.	Rekening van de Gagies & Kost der Manschap	305.290
		Aan den Kapitein in Kontanten .	**110.500**

	Tolwagters aan boord . . .	36.800
259	Werkmannen aan boord voor het Tonwerk te herstellen . .	22.500
	Kleine onkosten, briefporten Zegel papeer, fooi. boots, &c. . .	17.500
	14. Make laurs loon van de Bodemerg verkoping and onkosten . .	42.150
	Legalesatic der Documenten . .	12.240
	15. Rekening van den Vice-Consul .	131.020
	In Komen de & Uitgaande Lootsgeld & Gratificatie . . .	12.640
	Ann den Doctor voor Visites aan eenen Matroos	13.500
	Voor eene bemande boot ter dagelyksche beschikking van het schip genazende dezelfs verblyf in deze haven	22.500
260	Transport	Rs. 3,235.811
	46 Kosldagen voor twee Tolwagters.	44.160
	7 Kosldazen voor Zez Werkmannen.	14.280
	Aan den Nederlandsche Consul voor de Autorisatie ter verkoping der Bodemerg	2.400
	Duplicat copy van het protest .	4.000
	16. Aan de Schatters voor de Schalling van de lading	6.090
	Commissie op de opengeslagen en weder geladene 2,436 kisten fruit, Rs. 2,436.000 a 1½ p. 0|0 . .	36.540
		3,343.281
261	Commissie op de witgaven in Agencie 5 0|0.	167.164
		Rs. 3,510.445

(Signed) P. L. SCHEP.

Lissabon den 29 February, 1856.

GEORGE SEIDEL & SILVA.

At the execution of a commission for the examination of witnesses between John S. Lawrence, libellant, and the brig Lieutenant Admiral Collenburg, her tackle, &c., John Denbreens, Ira Denbreens, and Martin Denbreens, claimants, and P. L. Schep, [REC. CLIX & CLX, D. T., 1860.]—8

this paper was produced and sworn to by George Seidel, and by him deposed unto at the time of his examination before me—

C. A. MUNRO,

262 *Commissioner, Deputy Consul U. S. A.*

{United States Consulate Seal, Lisbon.}

Exhibit No. 2—C. A. M.

LISBON, 2 de Fevereiro, de 1856.

Os Snrs. George Seidel and Silva. Devem a Joze da Silva Valga,
De despeza de Fragatas e homens de trabalhar a bordo do navio Lieutenant Admiraal Collenburg.

	De 5 fragatas de descarregar, 2850, caixas comfrutas de bordo do dito navio p'a os armazens do deposito da Alfandega, a 3200 . .	Rs. 16.000	
	De 3 dias de demoras das ditas fragatas, a 1600	4.800	
263	De 5 Guardas de con de conduzer as ditas	1.200	
	De 3 Guardas de ficar 3 nontes nas fragatas, a 400	1.200	
	Debilhetes p'a des carga . .	.100	
	De Galegos de trabalhar abordo e descarga do navio 2 dias a 8 homens e 1 dia a 10, a 600 pr. homens	15.600	
	De botes de or levar a bordo .	.720	
	De Galegos de descargar das fragatas p'a os armazens 2850 caixas a 10	28.500	
264	De botes de er abordo do navio .	.320	
		———	68.440
	De 5 fragatas de Carregar 2436 caixas com fruta dos armazens p'a bordo do mesmo navio a 3200	16.000	
	De huma fragata de 414 caixas vazias dos armazens p'a bordo . .	3.200	
	De humu fragata de carregar laranja podre p'a deitar av mar .	4.800	
	De 7 Guardas de conduccao .	1.680	
	De 2 Galegos em 2 dias ir des carregar duas fragatas . . .	2.400	
265	De Galegos de embarcar 2436 caixas com fruta p'a bordo do dito a 10,	24.360	
	De 12 homens de embarcar 414 caixas vazias e huma fragata com laranja podre que se deitarao ao mar	7.200	

De 4 homens de ir baldear o mar .	2.400	
De Estivador de 2436 cx's a p'a de 10	24.360	
Transporte	86.400	
		68.440
De 4 homens de trabalhar abordo 5 dias	12.000	98.400
		Rs. 166.840

266 Recebi Cento e seis centos e seis mil e oito centos e quarenta reis da importancia d'esta centa acima mencinada.

LISBOA, 28 de Fevereiro, de 1856.

(Assignado)

P. L. SCHEP, p'r mon Par,

JOSE DA SILVA VALGA JUNIO.

At the execution of a commission for the examination of witnesses, between John S. Lawrence, libellant, and the brig Lieutenant Admiral Collenberg, her tackle &c., John Denbreens, Ira Denbreens, and Martin Denbreens, claimants, and P. L. Schep, this paper writting was produced and sworn to by Jose da Silva
267 Valgas, and by him deposed unto, at the time of his examination, before me,

C. A. MUNRO,
Commissioner, Deputy Consul U. S. A.

{United States Consulate Seal, Lisbon.}

Exhibit No. 3—*C. A. M.*

Conta dos jornaes e mais des pezas da gente qr. trabalhon pa. beneficiar as caixas que vierao de bordo pa. as Tercenas do Brique Hollandez Lieutenant Admiraal Callenburg, Capto. P. L. Schep. a saber:

Sotas 9,	45 dias, a	600	Rs.	27.000
Encaixadores	13.71 "	420		29.820
	23.98 "	360		35.280
O Caixeiro	8 "	160		1.280
2 cestos and luzes		"		380
268			Rs.	93.760
4 homens a bordo na ocoaziao do exame da caargatos				2.040
7 a de Pregos .	. a 2,500	. . .	Rs.	17.500
2 feixes d'arcos	. 1,500	. . .		3.000
85½ resmas de papel	240	. . .		25.520

16 duzias de Madeira, a 400 . . . 6.400

47.420

Ao encarregado pa. vigiar a descarga entrada arrum alao e sahida do armazem e beneficiar as caixas 18.720

269 Rs. 161.940

(Assignado) P. L. SCHEP.

Recebi a quantia de cento e sessenta e hum mil nove centos e quarenta reis metal das maos dos Snr'es George Seidel and Silva, importancia da conta supra.

Lisboa, 18 Fevereiro de 1856.

DOMINGOS PERES DOS SANTOS.

At the execution of a commission for the examination of witnesses, between John S. Lawrence, libellant, and the brig "Lieutenant Admiral Collenberg," her tackle, &c., John Denbreens, Ira Denbreens, and Martin Denbreens, claimants, and P. L. Schep, this paper writing was produced and sworn to by Domingos
270 Peres dos Santos, and by him deposed unto at the time of his examination before me.

C. A. MUNRO,
Commissioner, Deputy Consul U. S. A.

{United States Consulate Seal, Lisbon.}

At a stated term of the district court of the United States of America, for the southern district of New York, held at the City Hall, in the city of New York, on Wednesday, the ninth day of February, in the year of our Lord one thousand eight hundred and fifty.

Present, the Honorable Samuel R. Betts, district judge.

JOHN S. LAWRENCE
vs.
THE BRIG LIEUTENANT ADMIRAL COLLENBERG, her tackle, &c. } Vol. 13, page 390.

271 This cause coming on to be heard on special argument, Mr. Donohue argues the cause for the libellant; Mr. Owen argues the cause for the claimants; Mr. Donohue argues the cause for the libellant. Cur. adv. vult.

At a stated term of the district court of the United States of America, for the southern district of New York, held at the City Hall, in the city of New York, on Thursday, the 24th day of March, in the year of our Lord one thousand eight hundred and fifty-nine.

Present, the Honorable Samuel R. Betts, district judge.

JOHN S. LAWRENCE
vs.
THE BRIG LIEUTENANT ADMIRAL COLLENBERG, her tackle, &c. } 13, 390.

272 This case having been heard on the pleadings and proofs, and on special argument, by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court, that the libel in this cause be dismissed, with costs to be taxed. And it is further ordered, that unless an appeal be taken to this decree within the time limited and prescribed by the rules of court, that the stipulators for the libellants' costs pay into the registry of the court the amount of their stipulation, and that the clerk distribute the proceeds in satisfaction of the taxed costs.

273 (Signed) SAM. R. BETTS.

Decree: Libel dismissed with costs.

Filed the 24th day of March, 1859.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall in the city of New York, on Monday, the 11th day of 274 April, in the year of our Lord one thousand eight hundred and fifty-nine.

Present, the Honorable Samuel R. Betts, district judge.

JOHN DENBREENS, IRA DENBREENS, and MARTIN DENBREENS,
vs.
JOHN S. LAWRENCE. } 13, 400.

This case having been heard on the pleadings and proofs, on the 16th December, 1858, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libellants do recover from the respondent the sum of $1,944 12, being the freight upon that portion of the cargo delivered to the respondent at the port of New York, including interest thereon from the 275 delivery to the 5th April, 1859; and also the sum of $143 52 for general average, and the further sum of $614 52 for special charges upon the said cargo, with interest on such last mentioned sums, from the 15th day of June, 1856, to April 5, 1859, amounting to the sum of $908 53, which said several sums above mentioned amount to $2,851 27; and that the respondent do pay such last mentioned sum, with interest from the 5th day of April, 1859, to-

gether with the libellants' costs to be taxed; and that the libellants have execution therefor, to collect the same according to law
276 and the course and practice of this court.

(Signed) SAM'L R. BETTS.

Final decree for libellants, with interest and costs.

Filed the eleventh day of April, 1859.

Judgment docketed 11th April, 1859.

U. S. District Court.

JOHN S. LAWRENCE, &c.
vs.
THE BRIG L'T ADMIRAL COLLENBERG, &c.

SIR: Please to take notice that the libellant appeals from
277 the decree herein, and every part thereof.

Dated April 4, 1859.

Yours, &c.,

BEEBE, DEAN & DONOHUE,
For Lib'l't.

GEO. T. BETTS, esq., *Clerk.*

Endorsed: 13, 390. U. S. District Court. John S. Lawrence vs. The Brig Lieut. Adm'l Collenberg, &c. Notice of appeal. Beebe, Dean & Donohue, for lib'l'ts.

Filed April 4th, 1859.

U. S. District Court.

JOHN DENBREENS et als.
vs.
JOHN S. LAWRENCE.

GENTS.: Please take notice that the respondent appeals from the decree and every part thereof, in this cause, to the circuit court.

April 11, 1859.

278 BEEBE, DEAN & DONOHUE,
For Resp'd't.

To Messrs. OWEN & VOSE,
Proctors for Lib'l'ts.

GEO. T. BETTS, esq., *Clerk.*

Endorsed: U. S. District Court. John Denbreens et als. vs. John S. Lawrence. Notice of appeal. Beebe, Dean & Donohue, per resp'd't and appellant.

Filed April 11, 1859.

of the United States of America, for the Southern district of New York, in the second circuit.

JOHN S. LAWRENCE, Lib't and Appellant,
vs.
THE BRIG LIEUT. ADMIRAL COLLENBERG, &c. } Bond of Costs.

279 Know all men by these presents, that we, John S. Lawrence and Alexander M. Lawrence, are held and firmly bound unto the above named claimants, in the sum of two hundred and fifty dollars, to be paid to the said claimants, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the eleventh day of April, in the year of our Lord one thousand

280 eight hundred and fifty-nine.

Whereas the above named libellant hath prosecuted an appeal to the circuit court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in the above entitled suit by the judge of the district court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named libellant shall prosecute his appeal to effect,

281 and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JOHN S. LAWRENCE, [L. S.]
ALEX'R M. LAWRENCE. [L. S.]

Sealed and delivered, and taken and acknowledged, this 11th day of April, 1859, before me.

JOSEPH BRIDGHAM,
U. S. Com'r.

THE UNITED STATES OF AMERICA,
Southern District of New York, ss.

John S. Lawrence and Alexander M. Lawrence, being duly sworn, each depose and say that he resides in the city of New York, and that he is worth the sum of two hundred and fifty dollars, over and above all his just debts and liabilities.

JOHN S. LAWRENCE.
ALEX'R M. LAWRENCE.

Sworn to, this 11th day of April, A. D. 1859, before me.

282 JOSEPH BRIDGHAM,
U. S. Com'r.

The sufficiency of the sureties to the within bond approved.
(Signed) SAM'L R. BETTS,
District Judge.

N. Y., April 15, 1859.

283 Filed this 11th day of April, 1859.

Bond for Costs on Appeal.

of the United States of America, for the Southern district of New York, in the second circuit.

JOHN DENBREENS et al.
vs.
JOHN S. LAWRENCE, Respondent and Appellant. } Bond for Costs.

Know all men by these presents, that we, John S. Lawrence and Alexander M. Lawrence, are held and firmly bound unto the above-named libellents, in the sum of sixty-three hundred dollars, to be paid to the said libellants, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and
284 dated the eleventh day of April, in the year of our Lord one thousand eight hundred and fifty-nine.

Whereas, the above-named respondent hath prosecuted an appeal to the circuit court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in the above-entitled suit, by the judge of the district court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is
285 such, that if the above-named respondent shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JOHN S. LAWRENCE. [L. S.]
ALX'R M. LAWRENCE. [L. S.]

Sealed and delivered, and taken and acknowledged, this 11th day of April, 1859, before me.

JOSEPH BRIDGHAM,
U. S. Com'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

John S. Lawrence and Alexander M. Lawrence, being duly sworn, each depose and say that he resides in the city of
286 New York, and that he is worth the sum of sixty-three hundred dollars over and above all his just debts and liabilities.

JOHN S. LAWRENCE,
ALEX'R M. LAWRENCE.

Sworn to, this 11th day of April, A. D. 1859, before me.

JOSEPH BRIDGHAM,
U. S. Com'r.

The sufficiency of the sureties to the within bond approved.
N. Y., April 15, 1859.

(Signed) SAM. R. BETTS,
District Judge.

Filed this 11th day of April, 1859.

To the honorable the Circuit Court of the United States for the Southern district of New York, in the second circuit.

The petition of appeal of John S. Lawrence, respectfully shows:

That on or about the 19th day of June, 1856, the libellant filed his libel in the district court of the United States for the southern district of New York, against the brig L't Admiral Collen-
288 berg, for the reasons in said libel contained, praying that the said vessel might be condemned and sold to pay the libellant's claim and costs:

That the said vessel was duly arrested on said claim, and John Denbreens and another intervened as claimants, and the vessel was discharged on a bond therefor:

That such proceedings were thereupon had, that the said court, on the 24th day of March, 1859, did order and decree that the libellant's libel should be dismissed with costs, to be taxed,
289 which decree libellant and appellants claim to be erroneous in all its points:

Wherefore, petitioner prays that the circuit court of the United States for the southern district of New York may proceed to hear the said cause anew on new pleadings and proofs, and that the said decree, and all and every part thereof, be reversed and annulled, and a decree be entered in favor of the libellants and appellant.

BEEBE, DEAN & DONOHUE,
For Libellants.

Endorsed: 13,380. U. S. circuit court. John S. Law-
290 rence vs. the brig L't Admiral Collenberg. Petition of appeal. B. D. &. D. Filed 12th April, 1859.

To the honorable the Circuit Court of the United States for the Southern district of New York, in the second circuit:

The petition of appeal of John S. Lawrence respectfully shows: That on or about the 2d day of July, 1856, John Denbreens and another filed their libel in the district court of the United States for the southern district of New York, in the second circuit, against the petitioner, claiming to recover a large amount of freight and general average; and that the respondent, being served with process, duly appeared and filed his answer to the said libel. That thereafter such proceedings were thereupon had, that the district court of the United States for the southern district of New York did, on the 11th day of April, 1859, order, adjudge, and decree

that the libellants recover against the respondent, this appellant, the sum of twenty-eight hundred and fifty-one $\frac{27}{100}$ dollars, besides their costs to be taxed; which decree, and every part thereof, this appellant alleges and insists is erroneous, and ought to be reversed.

Wherefore your petitioner prays that the said circuit court of the United States may proceed to hear the said cause anew, on new pleadings and proofs, and that the decree aforesaid be reversed, annulled, and altogether held for nothing, and that the respondent and appellant be restored to all things he has lost thereby.

BEEBE, DEAN & DONOHUE,
For Appellant.

Endorsed: 13. 400. U. S. circuit court. John S. Lawrence ads. John Denbreens & als. Petition of appeal.

B. D. & D.,
For Appellant.

Filed 12th April, 1859.

At a special term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall in the city of New York, on Tuesday, the 27 day of September, in the year of our Lord one thousand eight hundred and fifty-nine.

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

JOHN S. LAWRENCE, Libl'nt & Appl'nt,
vs.
THE BRIG LIEUTENANT ADMIRAL COLLENBERG,
Cl'nt & Appl'nt.

JOHN DENBREENS et al., Libl'nt & Appellee,
vs.
JOHN S. LAWRENCE, Resp'dt & Appl'nt.

Mr. Owen reads from Apostles, on part of libl'nt and appellee.
Mr. Donohue reads from Apostles, on part of appellant.
Mr. Owen argues on part of appellees.
Mr. Donohue " " " " appellant.
Cur. adv. vult.

At a special term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall in the city of New York, on Friday, the seventh day of October, in the year of our Lord one thousand eight hundred and fifty-nine.

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

JOHN S. LAWRENCE, Libl'nt & Appl'nt,
vs.
THE BRIG LIEU. ADMIRAL COLLENBERG, her tackle, &c.

This cause having been brought for hearing on the appeal taken by the libellant from the decree of the district court herein, after hearing Charles Donohue, esq., advocate of the libellant and appellant, and Edward H. Owen, esq., of counsel for the claimants and respondent, and due deliberation having been had in the premises, it is ordered, adjudged, and decreed, that the said decree of the district court be, and the same hereby is, in all things affirmed, with costs of said appeal, to be taxed; and that the claimants do recover of the libellant the sum of one hundred and twenty-three dollars and fifty-seven cents, the amount of said decree, with four dollars and fifty-four cents, the interest thereon to the date hereof, and also the sum of twenty-seven dollars, for their costs of said appeal; amounting in all to the sum of one hundred and fifty-five dollars and eleven cents. And it is further ordered that, unless an appeal be taken within the time prescribed by law, a summary judgment therefor be entered in favor of John Denbreens, Ira Denbreens, and Martin Denbreens, the said claimants, against John S. Lawrence, the libellant, and Welcome R. Beebe, his surety, in the district court, and Alexander M. Lawrence, his surety on this appeal; and that they have execution therefor.

S. NELSON.

At a special term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Friday, the seventh day of October, in the year of our Lord one thousand eight hundred and fifty-nine.

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

JOHN DENBREENS, IRA DENBREENS, and MARTIN DENBREENS,
vs.
JOHN S. LAWRENCE.

This cause having been brought to a hearing on the appeal taken by the respondents from the district court herein, after hearing Charles Donohue, esq., advocate for the appellant, and Edward H. Owen, esq., advocate for the libellants and appellees, and due deliberation having been had in the premises, it is ordered, adjudged, and decreed that the said decree appealed from be and the same hereby is in all things affirmed with costs of said appeal to be taxed, and that the libellants recover of the respondents the sum of three thousand and fourteen dollars and forty-two cents, the

amount of the said decree and costs in the district court, with one hundred and four dollars and thirty-one cents, the interest thereon from the fifth day of April, 1859, as prescribed by said decree, together with one hundred and twelve dollars, the costs of this appeal, amounting in all to the sum of three thousand two hundred and thirty dollars and seventy-three cents.

And on like motion, it is further ordered that unless an appeal be taken therefrom within the time prescribed by law, a summary judgment therefor be entered in favor of the libellants against the said respondent and Alexander M. Lawrence, his surety, and that they have execution therefor.

S. NELSON.

To the honorable the Supreme Court of the United States of America:

The petition of appeal of John S. Lawrence, libellant and appellant, respectfully showeth:

That heretofore, and on or about the nineteenth day of June, 1856, libellant filed his libel against the brig Lieu. Admiral Collenberg in the district court of the United States for the southern district of New York, claiming that the said vessel, her master and owners, had failed to deliver cargo shipped by libellant, to the amount and in the same order as received by them, to his damage $5,000.

That thereafter an answer was duly filed taking issue on such libel, and the cause was duly heard in said district court by a decree thereof, on the 24th day of M'ch, 1859. The said court adjudged that the libel should be dismissed with costs, that the petitioner duly prosecuted his appeal from said decree to the circuit court of the United States, for the southern district of New York, in the second circuit, and the same was duly heard in said court, and that thereafter the said circuit court did order, adjudge, and decree that said decree of the district should be affirmed with costs; that your petitioner respectfully insists that the said decree is erroneous, and he appeals from said decree, and each and every part thereof, and prays that the Supreme Court of the United States may proceed to hear the said cause anew on new allegations and proofs, and to reverse and annul said decree of the said circuit court, and to restore to the appellant all rights which he has lost by reason of said decree.

JOHN S. LAWRENCE,
Appellant.

BEEBE, DEAN, & DONOHUE,
For Appellant.

Endorsed: Supreme Court U. S. John S. Lawrence, liblnt. and applnt., vs. The Brig Lieu. Admiral Collenberg, and John

Denbreens and o'rs, claimants, respond'ts. Petition of Appeal. Beebe, Dean & Donohue.

Due and timely service of a copy of the within petition is hereby admitted.

Dated October 5, 1859.

OWEN & VOSE,
Clmt's' Proctors.

Filed Oct. 5, 1859.

of the United States of America, for the Southern district of New York, in the second circuit.

JOHN S. LAWRENCE, Libellant and Appellant,
vs.
THE BRIG LIEUT. ADMIRAL COLLENBERG, JOHN DENBREENS and others, Respondents.
} Bond for Costs.

Know all men by these presents, that we, John S. Lawrence and Alexander M. Lawrence, of the city of New York, are held and firmly bound unto the above named John Denbreens, in the sum of five hundred dollars, to be paid to the said John Denbreens and al., for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the first day of October, in the year of our Lord one thousand eight hundred and fifty-nine.

Whereas the above named John S. Lawrence has prosecuted his appeal to the Supreme Court of the United States, to reverse the decree rendered in the above entitled suit, by the judge of the circuit court of the United States, for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named John S. Lawrence shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JOHN S. LAWRENCE, [SEAL.]
ALEX'R M. LAWRENCE. [SEAL.]

Sealed and delivered, and taken and acknowledged, this 1st day of Oct., 1859, before me.

[L. S.] O. K. STEELE,
Notary Public.

Filed this 5 day of October, 1859.

Approved: S. NELSON.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

John S. Lawrence and Alexander M. Lawrence, being duly

sworn, depose and say, each for himself, that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

JOHN S. LAWRENCE, [SEAL.]
ALEX'R M. LAWRENCE. [SEAL.]

Sworn to, this third day of Oct., A. D. 1859, before me.
[L. S.] O. K. STEELE,
Notary Public.

Citation.

By the Honorable Samuel Nelson, one of the judges of the circuit court of the United States for the Southern district of New York, in the second circuit.

To John Denbreens and others:

Whereas John S. Lawrence has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of you, the said John Denbreens and others, against the said John S. Lawrence, and has filed the security required by law; you are, therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the third day of October, in the year of our Lord 1859, and of the independence of the United States the eighty-fourth.

S. NELSON.

Endorsed: Due and timely service of a copy of the within citation is hereby admitted.

OWEN & VOSE,
Lib'l'nt's Proct's.

N. Y., Oct. 5, 1859.

Filed Oct. 5, 1859.

To the honorable the Supreme Court of the United States of America:

The petition of appeal of John S. Lawrence, respondent and appellant, respectfully showeth:

That heretofore, and on or about the 6th day of July, 1856, John Denbreens and others filed their libel in the district court of the United States for the southern district of New York, claiming that your petitioner was indebted to them in the sum of $\$2{,}851\frac{97}{100}$, for freight.

That, thereafter, an answer was duly filed *taken* issue on such libel, and the cause was duly heard in said district court, by a decree thereof, on the eleventh day of April, 1859. The said court adjudged that said libellants recover against your petitioner the

sum of $2,851\frac{57}{100}$; that the petitioner duly prosecuted his appeal from said decree to the circuit court of the United States for the southern district of New York, in the second circuit; and the same was duly heard in said court, and that thereafter the said circuit court did order, adjudge and decree that said decree of the district should be affirmed, with costs.

That your petitioner respectfully insists that the said decree is erroneous, and he appeals from the said decree and each and every part thereof, and prays that the Supreme Court of the United States may proceed to hear the said cause anew, on new allegations and proofs, and to reverse and annul said decree of the said circuit court, and to restore to the appellant all rights which he has lost by reason of said decree.

BEEBE, DEAN & DONOHUE,
For Appellant.
JOHN S. LAWRENCE,
Appellant.

Endorsed: U. S. Supreme Court. John S. Lawrence, respondent and appellant, vs. John Denbreens and others, libellant, respondent. Petition of appeal.

BEEBE, DEAN & DONOHUE.

Due and timely service of a copy of the within petition is hereby admitted.

Dated Oct. 5, 1859.

OWEN & VOSE.
Clm't's Proctors.

Filed Oct. 3, 1859.

Circuit Court of the United States of America, for the Southern district of New York, in the second circuit.

JOHN S. LAWRENCE, Appellant,
vs.
JOHN DENBREENS and als., Respondents.
} Bond for Costs.

Know all men by these presents, that we, John S. Lawrence and Alexander M. Lawrence, of the city of New York, are held and firmly bound unto the above named John Denbreens and others in the sum of five thousand dollars, to be paid to the said John Denbreens and al., for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the first day of October, in the year of our Lord one thousand eight hundred and fifty-nine.

Whereas the above named John S. Lawrence has prosecuted his appeal to the Supreme Court of the United States, to reverse the decree rendered in the above entitled suit by the judge of the cir-

cuit court of the United States for the southern district of New York, in the second circuit:

Now, therefore, the condition of this obligation is such, that if the above named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JOHN S. LAWRENCE, [L. S.]
ALEXANDER M. LAWRENCE. [L. S.]

Sealed and delivered, and taken and acknowledged, this 1st day of Oct., 1859, before me.

[L. S.]

O. R. STEELE,
Notary Public.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

John S. Lawrence and Alexander M. Lawrence, being duly sworn, depose and say each for himself, that he is worth the sum of seven thousand, over and above all his just debts and liabilities.

JOHN S. LAWRENCE.
ALEX. M. LAWRENCE.

Sworn to, this 1st day of Oct., A. D. 1859, before me.

O. R. STEELE,
Notary Public.

Approved: S. NELSON.

Filed October 5, 1859.

Citation.

By the Honorable Samuel Nelson, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To John Denbreens and others: Whereas John S. Lawrence has lately appealed to the Supreme Court of the United States for the southern district of New York, in the second circuit, made in favor of you, the said John Denbreens, claimants of the brig Lieut. Adm. Collenberg, against the said John S. Lawrence, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the third day of October, in the year of our Lord 1859, and of the independence of the United States the eighty-fourth.

Endorsed: Due and timely service of a copy of within citation is hereby admitted.
Dated Oct. 25, 1859.

OWEN & VOSE,
Cl'mt's Proct's.

Filed Oct. 5, 1859.

Filed 23d Dec'r, 1859.

10

Wm. C. Bryant & Co., Printers, 41 Nassau street, cor. Liberty.

163

Supreme Court,

OF THE UNITED STATES.

John S. Lawrence,
Applt.,
vs.
John Denbreens and ors., clmts. of Brig. "Lieut. Adml. Collingberg,"
Appellees.

John S. Lawrence,
Applt.,
vs.
John Denbreens and *als.*,
Respts.

These are appeals from the Circuit Court of the United States, for the Southern District of New York. The two causes depend on the same facts and were originally cross-suits in the District Court; the first brought by the appellant to recover for damage done to his cargo, and the second to recover freight on that cargo.

The contract on which both parties sued is a bill of lading, at fol. 30. The cargo, consisting of principally oranges and lemons, was shipped at Palermo for New York. The vessel, after taking the cargo on board, proceeded for New York, and had got into the Atlantic, when, meeting with loss of some spars, she put back to Lisbon, and arrived there on the 15th Jan'y, 1856, and remained

there until 4th March, 1856, having in the mean time discharged her cargo and refitted. On her arrival in New York the cargo, besides that taken out as damaged at Lisbon, had decayed 80 per cent.

The shipper contends the loss accrued in consequence of the captain's act in unnecessarily delaying in Lisbon, and discharging the cargo.

The facts of the case are undisputed, that the cargo went on board in good order; that the vessel came to Lisbon on the 15th, got to her place of repair on the 17th, and no survey was made until the 22d, and no steps were taken to repair until the 30th, nearly two weeks after arrival.

First.—The respondents Denbreens are common carriers, and cannot discharge themselves from loss except by the act of God or the damages of the seas.

Angel on Carriers, § 87.

Their contract is to carry by the bill of lading, and deliver to us in like good order, only those things excepted which are in the bill of lading. They must prove the loss occured by these perils.

Angel, 193; 21 Wend., 190.

And the burden of proof is on the carriers, to show *all the loss* to be by those perils, or he is liable for what is not by such peril, and he must point out what is. The non delivery in good order is evidence of neglect. (202, 472.)

Second.—Did the loss occur from an excepted peril? It did not. The nature of the cargo being tender, extra care required on part of carrier.

Angel, §§ 5 and 6.

I. It was the duty of the captain while in Lisbon to repair at once. He had no right to wait from the 15th to the 30th with a perishing cargo, merely to be told by surveyors what he should do—he knew it already.

II. It is abundantly proven in the case that four days should have been enough to have made all the repairs, and, substantially, this is not denied.

Delay being shown, the respondent—the vessel—attempts to answer it in three ways:

1. Rainy weather—impossible to work.

2. No men to get to work.

3. Holidays.

The evidence in regard to stormy weather is digested in the following page, and it seems to us beyond a doubt that no such excuse really existed.

The second ground of the necessary help is also digested and disposed of in the evidence.

As to holidays, that is disposed of fully on the evidence.

Third.—The vessel is also liable for having destroyed the fruit.

I. All of the witnesses examined here, who are experienced fruit-dealers, and give experience of dealing with fruit decaying, testify that the effect of such conduct was to destroy the cargo.

It is attempted to answer this by showing that the people in Lisbon thought otherwise. The answer to this is two-fold—

1. No one of their witnesses ever saw a cargo discharged and repacked before, and never saw the effects on even a re-packed box.

2. They testify what they knew in port of shipment, and give no experience of the effect on fruit so used for a long voyage, after the voyage. Our witnesses testify the effect on the fruit from such conduct.

It is no defense to the captain to say that he did not know better: he should not have taken the cargo unless he knew its nature and the way to use it. If he undertook to carry such a cargo, he, in law, it is presumed, holds himself out as competent.

Fourth.—On the question of damage the rule we suppose to be settled—that if any act of the captain is injurious to the cargo or goods of another, he cannot say that other damages helped, or that something else would have injured the goods if he had not. If any distinction is to be made in the nature of the damage he must clearly show what part of the damage occurred entirely without his fault. All we ask is just what the District Court did in ship *Howard*, 18 Howard, 231, last paragraph, what the Supreme Court approved, page 233, second paragraph.

Fifth.—The surveys and other documents are no evidence of their contents, and we object to them.

As to the other matters objected to in evidence, the ob-

jected parts appear in the papers and we submit they should be stricken out.

Sixth.—Finding that there would be delay he would have to undergo, the captain should, if he did any thing with the oranges, reship them in another vessel.

Seventh.—He charges us with general and special average. This was certainly not for our benefit, and we should not be charged with it.

The Court will see that on the 15th, when the vessel arrived at Lisbon, she did not leak and had only spars lost.

First question of fact, Was the vessel unnecessarily detained?

A delay of four days is admitted; is it exceeded?

The log-book shows, and all the case shows, arrival on the 15th, where she was repaired; on the 4th March she left.

It is admited that this is extraordinary, but attempted to be explained by

1. Rain, and prevented thereby to work.

2. Want of ability to get hands to work; not any allegation of insufficient force.

3. Holidays.

As to the first. For vessel.

Captain Richmer's deposition, on direct examination, shows he arrived in Lisbon on the 30th December; on cross-examination, he said he laid two days in Quarantine: that was January 1st; next day, 2d, had his surveys; then next day, 3d, commenced discharging; kept it steady three weeks; that brought it to the 24th January; he worked all this weather and not a perishable cargo. Captain Peterson arrived in Lis-

bon, (crew ex.) 21 or 22; had no surveys until the 25th, then one the 26th commenced and worked to 31st inclusive. This brings us with working weather until the first February. Now turn to:

Ship log-book:

Feb'y 1. Fine weather.
2. Discharge two lighters.
3. Sunday, dis.
4. Good weather, discharging.
5. Good weather.
6. Painted; good weather.
7. Raised top gallant mast; good weather.
8. Rainy; at work raising rigging.
9. Good weather; raising rigging.
10. Sunday; good weather and painted.
11. Good weather; painted.
12. As before.
13. Vessel work; no objection to weather.
15. No weather stated; taking in.
16. " " " "
17. " " " "
18. Rain " "
19. " " "
20. Got on board sails.
21.
22. Good weather; painted.
23. Variable—with rain.
24. Clear.
25. "
26. " no work.
27. "
28. Painted; no weather stated.
29. As before.

March 1. Painted.
2. Cleared ship.
3. " "
4. Fully ready.

Now, we respectfully submit that by their own witnesses and their log-book we have shown working days, from the

day of arrival to her departure. And further, it is no answer to say the weather was bad. The sails, spars, and rigging, could have been making ashore under cover.

This is all positive, and we have negative and sustaining evidence.

1. No entry anywhere in the log of any day he could not work; if such had been the fact, a log kept with such exactness, it would have been stated.

2. Other facts as potent as any in the case, are the testimony of Capt. Amy, last witness for the defence, that he could have put all their work up in two days and a half with his own crew. This is not denied. The evidence of Mr. Smith and Mr. Osborn that there are all facilities at Lisbon. Mr. Whitlock and Mr. Miner, that two days and a half would have made all the work.

3. The captain and mate are all examined, and show no single day or days so delayed, they could have sworn to it if it was the fact.

As to the second: The Court will see that no want of *material* to work on is pretended, no insufficiency of men is shown, but the entire inability to get men.

Now, what is the fact as shown in the last excuse. From the 30th December to the day the vessel left, no one shows a day when hands were wanted, and we show his crew of nine sufficient to do the work, and his and other vessels with help all the time.

Mr. Smith and Mr. Osborn, on the trial, show that no such complaint exists. The captain and his witnesses pretend to swear that no men were to be had on those days for any vessel, and yet we show that during that very time, by their own witnesses, work was doing on their several vessels.

Again, for negative proof—

The captain and mate are both sworn, and cannot tell a day that the vessel so lay idle, not an hour that she was so detained; their log-book, the mute witness of the time, shows such not to be the fact.

Were there holidays?
We answer none that detained them.

Smith and Osborn show that on any holidays the men will work if paid. Again, the log-book mentions no such days, and the captain does not point them out, as, in fact, the calendar of holidays would show it was not the fact.

On all these three points it will be seen that not one witness has been examined in Portugal to show a single fact, nor does either of the witnesses show any fact that any such excuses existed.

Second.—The next important question of fact is: Had the captain any right to use the fruit as he did?

1st. Because he should have stayed there but nine days, which would have brought it to the 26th, and that was four days before any survey was held on the fruit.

2d. It should have been evident to the captain, that handling it so often and shipping, unshipping, opening, spilling out, &c., with such a cargo, would ruin it. Now, there are five witnesses examined in Portugal on this point; they swear they never had the experience of such a transaction, as discharging to repack, but had sometimes before shipment known rotten oranges picked out; and they again show, that they have no experience of the results of such picking, or they never saw a cargo after it had reached its destination which had been rehandled.

All our witnesses, A. M. Lawrence, Charles Parsons, John N. Wells, Charles Ackerly, Isaac Gamo, Thomas R. Minturn, Piersall—7—say that such an act is the destruction of the cargo; these

men all swear from the experience of receipt of cargoes, and after it had been shipped, not as in Portugal, where it is only shipped. Again, the log shows: Feb. 2, Discharged her cargo into two lighters, variable with raise. 18. Taking in cargo; wind and rain. 19. Rain and wind; took in cargo.

Here is the fact of taking in and discharging cargo like this, that should never be wet or exposed to rain, or rainy weather.

It was placed in a storehouse in this stormy weather without windows closed, or anything to keep out the rain and damp.

The whole case shows gross carelessness on all points.

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Were there holidays?
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It was placed in a storehouse in this stormy weather without windows closed, or anything to keep out the rain and damp.

The whole case shows gross carelessness on all points.

E. Donohue
of Counsel for Appellt

SUPREME COURT

OF THE UNITED STATES.

JOHN S. LAWRENCE, Appellant,
vs.
JOHN DENBREENS, *et al.*, claimants of the brig "Lieut.-Admiral Collenberg," her tackle, &c.

Action for damages to the fruit.

and

JOHN S. LAWRENCE, Appellant,
vs.
JOHN DENBREENS, IRA DENBREENS, and MARTIN DEENBREENS.

Action for Freight, &c.

Respondent's Statement and Points.

ABSTRACT AND STATEMENT OF THE CASE.

This is an appeal from the decrees entered in each of the above-entitled actions in the Circuit Court of the United States for the Southern District of New-York, and dated respectively the 7th October, 1859.

The causes were tried together in the District Court, and also on appeal in the Circuit Court.

The first above-entitled suit was brought to recover damages alleged to have been sustained to a portion of the cargo of the vessel, consisting of oranges and lemons,

while on a voyage from Palermo to New-York; and the second suit was brought to recover freight and primage upon the cargo, together with its proportion of general average, and the special charges thereon.

The District Court dismissed the libel in the first-entitled suit, and gave a decree in favor of the respondents for the freight, &c., in the second, which decrees were in all things affirmed by the Circuit Court.

The facts appearing by the evidence are substantially as follows:

On the 12th December, 1855, there were shipped on board of the brig, then lying at Palermo, and bound for New-York, among other merchandise, 700 boxes of lemons and 2,150 boxes of oranges, for which the master signed bills of lading, undertaking to transport the same to New-York, and there deliver the same to the appellant, Lawrence, or his assigns, on payment of freight, &c., dangers of the seas, &c., and *liability to "decay" excepted.*

Bill of Lading, fol. 103.

The brig sailed from Palermo on the 16th of the same month, and afterward, while pursuing her voyage, she encountered storms, became dismasted, and otherwise seriously injured, insomuch that she was compelled to seek a port of necessity, to repair. She accordingly bore away, and put into Lisbon, where she arrived and anchored in the roadstead the 17th January, 1856. (Fols. 72, 73, 131, 192.)

The next day the master called a survey upon the vessel, which was duly ordered and held, and on the 22d of January the surveyors made their report in regard to the damages, &c., and recommended the repairs to be made. (Fol. 74. *Survey*, fols. 108, 112.)

On the same 22d January, the master having consulted with the consul and others about the fruit, requested a survey thereon. Surveyors were accordingly appointed,

who, as soon as the weather would permit, repaired on board, and examined the fruit by taking several boxes thereof from different parts of the vessel upon deck, and opening the same. Finding the fruit to be decaying, they ordered the whole to be discharged and placed in store until the vessel should be repaired. (Fols. 76, 78, 84, 133, 203. *Survey*, fols. 116 to 120.)

The fruit was thereupon accordingly discharged and placed in a well-ventilated warehouse, in such way as to have free circulation of air all around it. (Fols. 78, 81, 84, 203.)

The master thereupon proceeded with diligence to make repairs to his vessel. In consequence, however, of the scarcity of workmen, occasioned by the unusual number of vessels which had put into that port in distress, and which were then undergoing repairs, (being from twenty-five to thirty,) with delays occasioned by boisterous and stormy weather, and the festivals and holidays occurring at that season of the year, the repairs were not completed until about the 25th February following, when a survey was again held, and the vessel was pronounced seaworthy. (Fols. 93, 123.)

On the 9th February, the fruit having been again surveyed and examined, the master was advised to have the boxes opened, the decayed and rotten fruit thrown out, and the sound repacked for reshipment. (Fols. 79, 80, 207. *Survey*, fol. 121.)

This was regarded as essential to the preservation of the fruit, and experienced and competent persons were accordingly employed, who opened all the boxes, carefully picked over the fruit, and, after separating the sound from the unsound, and putting on dry wrappers wherever the paper thereon was wet, (but in no case disturbing the paper where it was dry,) again repacked the sound fruit in the boxes for shipment, which was completed on the 19th February. (Fols. 80, 91, 204, 205.)

There were more or less oranges and lemons in every box decayed; some were entirely decayed. The decayed and decaying fruit, so separated, amounted to 414 boxes. The residue, being the sound portion, was re-

shipped on board the vessel about five days before she sailed. (Fols. 81, 133.)

The master was obliged to raise money on bottomry with which to settle his bills; (fol. 125;) and, having done so, he sailed from Lisbon, in continuation of his voyage, on the 4th of March, and, after an extraordinary long passage from thence of seventy-three days, arrived at New-York the 20th May, 1856. (Fols. 75, 129.)

The fruit, upon arrival, was found to be considerably decayed. The consignee refused to pay the freight thereon, and insisted that the vessel was liable for the loss, and thereupon brought an action against the vessel, *in rem*, to recover the same, and the owners of the brig brought their action, *in personam*, against him, to recover the freight upon the entire cargo, except the 414 boxes thrown out at Lisbon. (*Libel*, fols. 2, 26.)

POINTS.

First.—The decree dismissing the libel for loss and damage to the fruit should be affirmed.

It is not pretended that there was any fault in the stowage or care of the fruit on the voyage; not but that the brig sustained such sea damage as compelled her to bear away and put into Lisbon to repair. The only grounds of complaint are, (1,) that the repairs were not completed with diligence, and (2) that the fruit was improperly discharged and picked over.

Second.—The repairs were completed with reasonable diligence, taking into consideration all the facts and circumstances attending the same.

I. The testimony shows that there was an unusually large number of vessels, which had put in there to repair, undergoing repairs, which rendered it difficult to procure mechanics. (Fols. 151, 152, 158, 159.)

That it was, also, the carnival season, and there were two or three festivals and holidays in a week, on which days the mechanics would not work. (Fols. 152, 153.)

That there were also "strikes" among the mechanics for higher wages, and for several days they refused to work. (Fols. 149, 159.)

That the weather was rainy or boisterous, especially so in the first part of the time, during which the work could not be carried on. (Fols. 63, 93, 141, 149.)

That Lisbon was a bad place to make repairs; that there were no docks, so that vessels, while undergoing repairs, were obliged to lie in the roadstead a mile or more from shore, where there is always a strong tide. (Fols. 89, 158.)

II. The work was done with reasonable diligence.

Capt. Schip says, "I could not get the work done sooner. * * The repairs were done as soon as I could get them done." (Fol. 93.)

Vandermeiden, the mate, says, they were detained there by bad weather and making repairs. (Fol. 135.)

Capt. Peterson, who was there at the time, says it takes a great while to get repairs made at that place; they were made "as soon as they could be. * * * There was no delay, to my knowledge." (Fols. 141, 142.)

Mr. Seidal, the consignee, says, he was frequently aboard, and saw the "sailors and other people constantly at work to hasten the repairs. The captain was doing his utmost to get ready, as soon as possible, to continue his voyage." (Fol. 221.)

Neither of the witnesses who were there speak of any unnecessary delay or want of dispatch. If there had been any such, it is strange that it was not observed and spoken of.

III. The only witnesses whose testimony in any way tends to show that there was delay, are Whitlock, Miner and Avery; the two former being ship-builders in New-York, and the other master of a New-York regatta. (See their testimony, fol. 68.)

They were not there at the time, and knew nothing of the actual circumstances and embarrassments attending the case, a knowledge of which was indispensable to enable them to form a correct judgment.

Neither of them pretends to say what would be a reasonable time to do all the work required to be done on the vessel. They speak only as to the *spars*. There was much other work. Even if, with their men and facilities, they could make the spars in New-York in two or three days, yet that does not establish any unreasonable delay in completing the work in Lisbon.

Even one of the appellant's witnesses (Mr. Osborne) says, that he "would think it doubtful if 25 or 30 vessels could be repaired there with despatch at the same time." (Fol. 63.)

THIRD.—If the repairs were not completed with despatch, and if some unnecessary delay occurred in respect thereof, still that is not sufficient to render the vessel liable for the loss of the fruit.

I. There is no allegation in the libel of any such delay, nor that the fruit perished in consequence thereof, or through any fault on the part of the

vessel; nor is there any evidence upon that subject. (*Libel*, Art. 3, fol. 4.)

McKinlay *vs.* Morrish, 21 *How. R.* 343.

II. The fruit had a strong inherent tendency to decay, and, in the absence of positive proof, it may be inferred that it perished from such cause, and not from the delay. The bill of lading excepts tendency to decay.

Bill of Lading, fols. 103 to 106.
Wissman *vs.* The "Howard," 18 *How. R.* 231.

FOURTH.—As to the care of the fruit. It is not pretended that the master was guilty of any neglect of duty, or that he committed any error in regard to the same, except that of discharging it and separating the sound from the unsound, &c., at Lisbon; which acts, the respondents insist, were proper, and within the line of his duty.

I. The fruit, as appeared upon the first survey thereof, had in fact commenced decaying before the vessel reached Lisbon. With the knowledge of this, it was the master's duty to do all that he could to arrest the progress of decay.

Angel on Carriers, secs. 160, 210.
Bird *vs.* Croswell, 1 *Miss. R.* 81.
Choteaux *vs.* Leech, 18 *Pa. R.* 224.
Lyn *vs.* Fisher, 12 *Miss. R.* 272.

II. In calling surveys, and adopting the course recommended, the master faithfully and properly discharged his legal duty, and acted in accordance with usage. If the fruit had been insured, such surveys would have been material.

He acted in this matter in perfect good faith, and with an honest desire to preserve the fruit.

His acts were approved by all. No one seems to have entertained a doubt upon the propriety of his acts, and it is not pretended that he acted in any way in *bad faith.*

III. The work was well and skillfully done, by persons who were in the constant practice of handling, packing and shipping fruit. This is clearly established by the Lisbon witnesses, and there is no contradictory testimony upon the subject. (Fol. 235.)

The weight of testimony shows that such acts did not *increase*, but did in fact *arrest* the progress of decay. The witnesses who saw and handled the fruit at Lisbon say, that without this the whole cargo would have perished before arrival.

Test. of Adams, fols. 196, 197.
" *Martin*, " 206, 207.
" *Siedel*, " 218.
" *Santos*, " 249.
" *Schip*, " 83, 86.

IV. The only witnesses who testify in any wise to the contrary are those residing in the city of New-York. They seem to think that the fruit should have been left in the hold untouched, but they all admit that if such had been the case it would still have arrived in a damaged state.

Some of them think that removing the paper wrappers was injurious, but such wrappers were not removed except where they were wet, and this was proper. (Fols. 59, 91.)

V. Even if it were true, as alleged, that such fruit

preserves longer to allow the sound and unsound to remain together than to separate them, (which seems improbable,) and that the master's efforts to preserve the fruit were, in fact, injurious; still, as those efforts were made in good faith, in the exercise of his best judgment, corroborated by all parties present, the vessel should not be held responsible for the damages.

The master was the agent of all concerned, in reference to the fruit as well as the vessel, and his acts were therefore binding upon the owner of the cargo.

Judson *vs.* Warren Ins. Co. 1 *Story's C. C. R.* 342.
Flanders on Shipping, § 173.

VI. It cannot be reasonably asserted that the fruit decayed in consequence of what occurred at Lisbon.

What would have been its condition, on arrival at New-York, if it had been left in the hold while the repairs were being made, must be merely conjectural.

In every cargo arriving from abroad the fruit is more or less decayed. The fact that it had already become much decayed upon arrival at Lisbon, (when not more than one-third of the voyage from Palermo to New-York had been performed,) warrants the presumption that it would have perished before reaching New-York.

Parsons testifies, that with ten rotten in a box the whole would perish in twenty or thirty days; (fol. 59;) a much less time than it would have taken to complete the voyage if the vessel had not been delayed a week at Lisbon.

The fruit no doubt perished from its own inherent tendency to decay; and not otherwise;

and such decay being excepted in the bill of lading, the vessel is not liable therefor.

Bill of Lading, fol. 103.
Angel on Car. lec. 210.
Story on Bail. " 492, *a.*

VII. It was not the imperative duty of the master, under the circumstances, to employ another vessel and forward the lemons and oranges. He had the right, as agent of the vessel and cargo, to exercise his discretion upon that subject, and, in the absence of any evidence to the contrary, the court may infer that, by retaining and not forwarding the same, he exercised a sound discretion.

Flanders on Shipping, § 173.

But it is doubtful, to say the least, whether any other vessel could have been procured, if the master had desired, for it appears that there were only *two* others in Lisbon bound for New-York, (fol. 93,) both of which sailed from thence after the brig; one, the "Hollandia," on the 8th March, (fol. 140,) and the other, the "S. H. Andrews," on the 7th April, (fol. 157,) while the brig sailed on the 4th March.

FIFTH.—The decree of the Circuit Court, dismissing the libel for damages to the cargo, should be affirmed, with costs.

POINTS IN THE SUIT FOR FREIGHT, &c.;

Being the one secondly above entitled.

FIRST.—Having performed the voyage, and delivered the cargo according to the bill of lading, the respondent was entitled to his freight upon the portion delivered, notwithstanding some parts thereof were damaged.

SECOND.—The general average and special charges upon the fruit, as allowed by the decree of the District Court, were proper, and no error occurred in this respect.

I. The items of those charges were not disputed in any manner. The amount allowed by the decree was adjusted by the proctors for the respective parties, allowing wages and provisions of the officers and crew for the time fixed by that court; although it is respectfully submitted that his honor the District Judge should have allowed the same, under the circumstances, as established by proof, for the entire time intermediate the vessel's bearing away for Lisbon and her actual departure therefrom.

II. No question was made upon this subject in the Circuit, and the decree of the District was, in this respect, affirmed *sub silentio*.

III. But, however this may be, the items for general and particular average were properly allowed.

1. The bill of lading expressly stipulates for the payment of freight, with "average accustomed," (fol. 105,) by which it is supposed the parties meant the ordinary general and particular average to which the cargo might become subject in the course of the voyage.

2. It is clear that the expenses of wages and provisions from the time of bearing away, &c., at least for the time allowed by the District Court, were for the common benefit of all, which, by the well-settled law in the United States, were to be contributed for in general average.

2 *Phil. on Ins.* (2d Ed.) 120, 121.
Abbott, (5th Am. Ed.) 596, *note.*
U. S. *vs.* Wilder, 3 *Sumn. R.* 308.

3. The expenses of unlading, storing, &c., &c., the fruit was incurred for its special benefit, and was, therefore, a *particular* average, in other words, a *special charge* thereon, which was recoverable in this action.

All these expenses were incurred by the master in good faith, and in the exercise of his best judgment, for the safety and preservation of the fruit, and the law gave him a lien upon the same for reimbursement.

Mut. Safety Ins. Co. *vs.* Cargo Brig George, *Olcott's Ad. Rep.* 89.
2 *Arnould on Ins.* p. 953.

THIRD.—The answer of the appellant merely puts in issue the allegation of the libel. It does not claim to set off or recoup the alleged damages to the cargo, and, therefore, if such damages were occasioned by the fault of the master, it will not constitute any defence to this action.

The damages are claimed in the other suit, brought specially for that purpose, and if it should be decided therein that the vessel is liable therefor, still there should be no abatement from the decree in this case.

FOURTH.—The decree in this case should be affirmed, with costs.

E. H. OWEN,
Of Counsel for Respondent.

2 Lay - Salvage

UNITED STATES DISTRICT COURT.

JOHN S. LAWRENCE

vs.

THE BRIG LIEUT.-ADMIRAL COLLOMBERG.

Opinion of Judge Betts in the Case for Damages to the Fruit.

This was a libel filed against the brig to recover damages alleged to have been sustained by a cargo of fruit shipped on board the brig at Palermo, in December, 1855, to be carried to this port. The answer averred the full performance of the bill of lading, except that 414 boxes of lemons and oranges perished from inherent tendency to decay, and without fault or negligence on the part of the vessel. *Held by the court*, that the libellants have not proved that any wrongful act had been done by the master of the vessel, or that he had been guilty of any culpable omission of duty on the voyage, which caused the loss or deterioration of the cargo; or that the delay of the vessel in Lisbon, where she put in for necessary repairs, beyond the time reasonably required to obtain such repairs, was the immediate or proximate cause of the injuries which the fruit sustained on the voyage.

It being proved that the efforts of the master in Lisbon to preserve the fruit lost or deteriorated were made in good faith, and under the advice of experienced and competent persons, and conformably to the best judgment of the master, the vessel is not responsible for the injuries the fruit may have received, even if the means used to save it were not the most suitable and well judged.

The master was *quasi* agent of both parties in relation to the cargo found in a perishing condition on board at Lisbon, and his acts, honestly put forth under any emergency, with intent to the benefit of both, are to be

favorably construed in his behalf against the complaints of either.

The fruit being proved to be inherently subject to decay, and the bill of lading being qualified with that condition, the vessel is not responsible for its sound delivery, without evidence of some misfeasance of the master which set in action or aggravated that tendency to decay.

Libel dismissed, with costs.

191

[illegible]

U. S. DISTRICT COURT,

OF DECEMBER TERM, 1858.

JOHN DENBREENS and others, *vs.* JOHN S. LAWRENCE.	Minutes, No. 76, p. 133.

JOHN S. LAWRENCE, *vs.* The Brig *Lieutenant Admiral Collenberg*, her tackle, &c.	A cross action.

The first of these two suits was brought by the owners of the Dutch brig *Lieutenant Admiral Collenberg* to recover freight for the transportation of a cargo of fruits from Palermo to New York, under the provisions of a charter party, dated November 30th, 1855, between the master of the vessel and the trading house of J. & S. Florio, of Palermo, and consigned by the latter to the respondents. The evidence and arguments on the trial were limited to the first entitled cause, the cross action not being brought to hearing on this trial by itself specifically.

The bill of lading for the cargo was executed at Palermo by the master on the 12th of December, 1855, and the vessel set sail with the cargo on the 15th of that month, and arrived at this port the 20th of May, 1856, and duly delivered the cargo mentioned in the bill of lading in good

3 order to the respondents, except 414 boxes of oranges and lemons, which the libellents allege were decayed and lost on the voyage, and excepting injuries occasioned thereto by perils of the seas and the natural tendency of such cargo to decay.

The libel also charges that during the voyage the vessel encountered a violent storm and was thereby so injured and disabled as to be compelled to bear away and put into the port of Lisbon in Portugal for necessary repairs; and that after procuring such necessary repairs to be made with
4 all reasonable diligence and dispatch, th vessel resumed her voyage from Lisbon with the aforesaid cargo on board, except the decayed fruit, on the 4th of March, 1856, and arrived in New York on the 20th May thereafter.

That the oranges and lemons, being found in a perishing condition, were landed and stored in a suitable place at Lisbon, whilst the vessel was undergoing repairs, and, in order to arrest their decay, were picked over and examined, and all the rotten and decayed thrown out and the remainder properly packed in boxes and again laden on board.
5 That in consequence of the losses, injuries, repairs, &c., caused by such disasters, the libellants were compelled to expend large sums of money, which the respondent is bound to repay by way of general average on special charges on the cargo.

The answer interposes a general denial to almost all the special allegations of the libel, averring a readiness and willingness on the part of the respondent to (receive) the cargo and pay the freight thereon, according to the terms upon which it was shipped, but that the vessel has not de-
6 livered a large portion of the cargo to the respondent, and what was delivered was in a rotten and bad condition and unfit for use, from the fault and negligence of the owners or master, and that the damages chargeable to the vessel exceed the freight of the cargo, and that the respondent is prosecuting his action for recovery thereof against the vessel. (The counter or cross-libel of the owners of the fruit, and the answer thereto of the owners of the vessel, were also put in, and read on the trial.)

BETTS, J.—The amount of freight under the shipping 7
contract demanded by the libellants is $1,862\frac{47}{100}$, deducting $207 as the value of the oranges and lemons not delivered by the ship, and adding to the balance ($1,653\frac{47}{100}$) a general average claim of $143\frac{50}{100}$, and other special charges and losses $614\frac{52}{100}$, in the whole $2,313\frac{99}{100}$. The controversy, on the hearing, was limited to the consideration of the justness of these demands; and although the general submission of the two actions to the Court by the counsel, 8
on their brief, would seem to import an expectation that the direct and cross actions would be disposed of at the same time by the judgment of the Court, yet I do not find the materials furnished me in the proofs or arguments on which I could fairly find an affirmative decree against the vessel in favor of the owner of the cargo, even if a right of action be established by him. The decree on this hearing will accordingly be limited to the disposition of the primary issues between the ship owners, who demand freight and average compensation for loss of time and repairs of the 9
ship, &c., and the consignee or owner of the cargo, who opposes these claims as unfounded in law or equity, except in so far as the determination of those points may virtually involve the disposal of the rights of the parties in the cross action also. The parties on either side will have the privilege, if they desire it, to argue separately the case of *Lawrence against the brig*, with a view to a definitive decree of recovery or dismissal to enable an appeal to be prosecuted therein, or a final decree will be ordered in the cause dismissing the libel to that end, if they decline prosecuting the action any further in this Court.

The owner of the cargo makes no question on the trial 10
of the cause, but that the perils and injuries incurred by the vessel on the voyage made it necessary, for the safety of the ship and cargo, to bear away from her track into Lisbon, as a port of distress, in order to refit and render the vessel capable of continuing and completing her voyage. A right to contribution in general average for the remuneration in part of the loss so sustained is secured the ship owner by the maritime law (3 Kent, 234; Abbott [Perkins' Ed.] 596, note 1), although no part of the ship or her tackle was voluntarily sacrificed on the occasion. But

11 the allowance is limited to the wages and provisions of the crew from the time of putting away for the port of necessity, and other expenses necessarily incurred during the detention there for the benefit of all concerned.

The expense of the repair of the ship, when the injury arises from the perils of the seas, and not from a voluntary sacrifice necessarily made for the common benefit, falls upon the ship alone. (Flanders on Maritime Law, 269.) Such being the condition of the ship and her damages in this case, the owner cannot bring into general contribution
12 his expenditures in procuring surveys of the vessel, those being only incidental to her repair, and were no more for the common benefit of all concerned in the voyage than the repairs themselves put upon her. (Smith's Mercantile Law, 308-9, and notes) There is accordingly no ground for claim of general contribution in this case, further than respects the wages and provisions of the crew during the period the vessel was put away for a port of distress, and her necessary detention there in obtaining her repairs.

As between the shipowners and the owners of cargo, it
13 was the duty of the former to determine promptly, on the arrival of the vessel at Lisbon, whether she would be put in repair and complete her voyage, and if so at once to commence the work necessary to that end. She made the port on the 15th of January, and got to her place of repair in the harbor on the 17th, but delayed beginning work on her sails, spars, or bottom until the 22d. The evidence is very clear that the sails and spars might have been prepared out of the ship, and if not wholly by the ship's company, with very slight assistance otherwise, and that only a few days' labor would be required to supply all that was necessary in that branch of the losses. There is strong
14 proof that the entire work, with strict diligence, might have been completed within a week at that port. This is the substance of the testimony of Whitlock and Miner, shipbuilders and joiners, and Avery, ship-master, all men experienced in this description of repairs, and familiar with the means of doing such work at Lisbon. I lay out of view the estimates of witnesses who do not speak to this point from actual experience. There is is no legal reason for imposing upon the cargo a contribution for the support of

the crew for a period longer than was indispensable, with 15
the exercise of all practical diligence, to make those repairs upon the vessel which were necessary to enable her to complete her voyage. I think, upon the proofs, it is palpable that might have been effected in a period far less than the forty-seven days consumed upon the business. Making every allowance which may fairly be supposed called for, because of the inconveniences of the place for handling vessels under repair, the weather that was encountered, and the dilatory habits of the laborers and 16
mechanics in that port, I think the evidence justifies the conclusion that all which was needed might, with proper attention and perseverance by the master, have been supplied the vessel, and she have been put again on her voyage within three weeks after her arrival there. I shall, therefore, order the period for the support of the crew to be limited in the generl average allowance to twenty-one days after reaching Lisbon.

The further items entering into the average adjustment have not been discussed by counsel on either side, and they 17
therefore are not adverted to in detail by the Court. Either party may have the opportunity, if desired, to bring the items of expenses admitted or rejected by the adjustor to the consideration of the Court, and obtain specific directions as to their admission or rejection on the adjustment; or if the parties fail to agree mutually in respect to the cost and support of the crew, the report may be again placed before the adjustor, who will reform it pursuant to this order.

Should the owner of the cargo of fruit not desire to be further heard in his suit against the vessed, the libel in that action will be ordered dismissed, with costs to be taxed.

199

U. S. Circuit Court.

1

JOHN DENBREENS *et al.*,

vs.

JOHN J. LAWRENCE.

JOHN J. LAWRENCE,

vs.

The Brig "LIEUTENANT ADMIRAL COLLENBERG."

Sept. 28th, 1859.

NELSON, C. J.—The first of these suits was brought to recover freight on a shipment of fruit from Palermo to New York, in the brig. The second was a cross-suit by the consignee to recover for damages to the fruit in the course of the voyage. The bill of lading contained the usual exceptions of dangers of the sea, &c., and also of liability to inherent decay. The brig sailed from Palermo on the 2
16th December, 1855, and arrived at New York on May 20th, 1856, after a passage of over seventy days. She encountered a storm on her voyage, and was compelled to bear away to the port of Lisbon, in Portugal, for repairs, where she was detained some forty-seven days in refitting, and where a survey of a portion of the fruit which was perishable (700 boxes of lemons, and 2,150 boxes of oranges) was directed, and which were all discharged from the ship and placed in a well ventilated warehouse or store. The boxes were opened and examined, and the fruit found

3 to be decaying. The unsound were separated from the sound, and then repacked with care—a quantity equal to 414 boxes of the lemons and oranges were found to be so far decayed as to be worthless—the greater proportion oranges. On the arrival of the ship at this port, almost the whole of this fruit was in a very damaged condition.

It is not denied, on the part of the counsel for the consignee, but that the damage was occasioned by the natural and inherent decay of the article; but it is insisted that the fault of the master in the course of the voyage, con-
4 tributed to this damage.

1. It is insisted that the length of time occupied in making the repairs at Lisbon was unnecessary and unreasonable, and that this delay was occasioned by the carelessness and want of energy and activity of the master, and that it contributed to the damage to the fruit: and—

2. That the opening of the boxes of the fruit at Lisbon, and the handling of it, in separating the sound from the unsound, and repacking the same, had a tendency to in-
5 crease the decay of the article, and manifested a want of proper skill in taking care of the fruit in the course of the shipment, and contributed to the damage.

The Court below overruled these positions, and held upon the proofs that the master had not been guilty of any culpable omission of duty on the voyage which caused the loss or deterioration of the fruit, and that the delay of the vessel in Lisbon, where she put in for repairs, beyond the time reasonably required to obtain them, was not the immediate or proxi-
6 mate cause of the injuries the fruit had sustained, and that it being proved that the efforts of the master in Lisbon to preserve the fruit, were made in good faith, and under the advice of experienced and competent persons, and according to the best judgment of the master, the vessel was not responsible for the injuries the fruit received, even if the means used to save it were not the most suitable and well judged; that the master was *quasi* the agent of both parties in respect to the cargo found in a perishing condition on board of his ship, and his acts, honestly put forth in the

emergency with intent to the best interests of all concerned, 7
are to be indulgently considered.

We have looked into the evidence in the case, and although it is contradictory, and in respect to the time consumed in the repairs at Lisbon, not very satisfactory, we think the weight of it sustains the views of the Court below. We admit it is difficult to understand or believe that some seven weeks should be consumed at Lisbon in refitting the vessel, when the work could have been done in this port in as many days. But the evidence returned on the commission executed in Lisbon, explained it fully; not, how- 8
ever, in a manner very creditable to the character or enterprize of the shipmasters of that port, or to the commercial enterprise of the Government of Portugal.

We are satisfied that the decrees of the Court below are right, and should be affirmed.

For appellants, Messrs. Beebe, Dean & Donohue.
For respondents, Messrs. Owen & Vose.

205

U. S. DISTRICT COURT,

OF DECEMBER TERM, 1858.

1

JOHN DENBREENS and others, *vs.* JOHN S. LAWRENCE.	Minutes, No. 76, p. 133.

JOHN S. LAWRENCE, *vs.* The Brig *Lieutenant Admiral Collenberg*, her tackle, &c.	A cross action.

The first of these two suits was brought by the owners of the Dutch brig *Lieutenant Admiral Collenberg* to recover freight for the transportation of a cargo of fruits from Palermo to New York, under the provisions of a charter party, dated November 30th, 1855, between the master of 2
the vessel and the trading house of J. & S. Florio, of Palermo, and consigned by the latter to the respondents. The evidence and arguments on the trial were limited to the first entitled cause, the cross action not being brought to hearing on this trial by itself specifically.

The bill of lading for the cargo was executed at Palermo by the master on the 12th of December, 1855, and the vessel set sail with the cargo on the 15th of that month, and arrived at this port the 20th of May, 1856, and duly delivered the cargo mentioned in the bill of lading in good

order to the respondents, except 414 boxes of oranges and lemons, which the libellents allege were decayed and lost on the voyage, and excepting injuries occasioned thereto by perils of the seas and the natural tendency of such cargo to decay.

The libel also charges that during the voyage the vessel encountered a violent storm and was thereby so injured and disabled as to be compelled to bear away and put into the port of Lisbon in Portugal for necessary repairs; and that after procuring such necessary repairs to be made with all reasonable diligence and dispatch, the vessel resumed her voyage from Lisbon with the aforesaid cargo on board, except the decayed fruit, on the 4th of March, 1856, and arrived in New York on the 20th May thereafter.

That the oranges and lemons, being found in a perishing condition, were landed and stored in a suitable place at Lisbon, whilst the vessel was undergoing repairs, and, in order to arrest their decay, were picked over and examined, and all the rotten and decayed thrown out and the remainder properly packed in boxes and again laden on board. That in consequence of the losses, injuries, repairs, &c., caused by such disasters, the libellants were compelled to expend large sums of money, which the respondent is bound to repay by way of general average on special charges on the cargo.

The answer interposes a general denial to almost all the special allegations of the libel, averring a readiness and willingness on the part of the respondent to (receive) the cargo and pay the freight thereon, according to the terms upon which it was shipped, but that the vessel has not delivered a large portion of the cargo to the respondent, and what was delivered was in a rotten and bad condition and unfit for use, from the fault and negligence of the owners or master, and that the damages chargeable to the vessel exceed the freight of the cargo, and that the respondent is prosecuting his action for recovery thereof against the vessel. (The counter or cross-libel of the owners of the fruit, and the answer thereto of the owners of the vessel, were also put in, and read on the trial.)

BETTS, J.—The amount of freight under the shipping contract demanded by the libellants is $1,862\frac{47}{100}$, deducting $207 as the value of the oranges and lemons not delivered by the ship, and adding to the balance ($1,653\frac{47}{100}$) a general average claim of $143\frac{50}{100}$, and other special charges and losses $614\frac{52}{100}$, in the whole $2,313\frac{99}{100}$. The controversy, on the hearing, was limited to the consideration of the justness of these demands; and although the general submission of the two actions to the Court by the counsel, on their brief, would seem to import an expectation that the direct and cross actions would be disposed of at the same time by the judgment of the Court, yet I do not find the materials furnished me in the proofs or arguments on which I could fairly find an affirmative decree against the vessel in favor of the owner of the cargo, even if a right of action be established by him. The decree on this hearing will accordingly be limited to the disposition of the primary issues between the ship owners, who demand freight and average compensation for loss of time and repairs of the ship, &c., and the consignee or owner of the cargo, who opposes these claims as unfounded in law or equity, except in so far as the determination of those points may virtually involve the disposal of the rights of the parties in the cross action also. The parties on either side will have the privilege, if they desire it, to argue separately the case of *Lawrence against the brig*, with a view to a definitive decree of recovery or dismissal to enable an appeal to be prosecuted therein, or a final decree will be ordered in the cause dismissing the libel to that end, if they decline prosecuting the action any further in this Court.

The owner of the cargo makes no question on the trial of the cause, but that the perils and injuries incurred by the vessel on the voyage made it necessary, for the safety of the ship and cargo, to bear away from her track into Lisbon, as a port of distress, in order to refit and render the vessel capable of continuing and completing her voyage. A right to contribution in general average for the remuneration in part of the loss so sustained is secured the ship owner by the maritime law (3 Kent, 234; Abbott [Perkins' Ed.] 596, note 1), although no part of the ship or her tackle was voluntarily sacrificed on the occasion. But

11 the allowance is limited to the wages and provisions of the crew from the time of putting away for the port of necessity, and other expenses necessarily incurred during the detention there for the benefit of all concerned.

The expense of the repair of the ship, when the injury arises from the perils of the seas, and not from a voluntary sacrifice necessarily made for the common benefit, falls upon the ship alone. (Flanders on Maritime Law, 269.) Such being the condition of the ship and her damages in this case, the owner cannot bring into general contribution
12 his expenditures in procuring surveys of the vessel, those being only incidental to her repair, and were no more for the common benefit of all concerned in the voyage than the repairs themselves put upon her. (Smith's Mercantile Law, 208-9, and notes) There is accordingly no ground for claim of general contribution in this case, further than respects the wages and provisions of the crew during the period the vessel was put away for a port of distress, and her necessary detention there in obtaining her repairs.

As between the shipowners and the owners of cargo, it
13 was the duty of the former to determine promptly, on the arrival of the vessel at Lisbon, whether she would be put in repair and complete her voyage, and if so at once to commence the work necessary to that end. She made the port on the 15th of January, and got to her place of repair in the harbor on the 17th, but delayed beginning work on her sails, spars, or bottom until the 22d. The evidence is very clear that the sails and spars might have been prepared out of the ship, and if not wholly by the ship's company, with very slight assistance otherwise, and that only a few days' labor would be required to supply all that was necessary in that branch of the losses. There is strong
14 proof that the entire work, with strict diligence, might have been completed within a week at that port. This is the substance of the testimony of Whitlock and Miner, shipbuilders and joiners, and Avery, ship-master, all men experienced in this description of repairs, and familiar with the means of doing such work at Lisbon. I lay out of view the estimates of witnesses who do not speak to this point from actual experience. There is is no legal reason for imposing upon the cargo a contribution for the support of

the crew for a period longer than was indispensable, with 15
the exercise of all practical diligence, to make those repairs upon the vessel which were necessary to enable her to complete her voyage. I think, upon the proofs, it is palpable that might have been effected in a period far less than the forty-seven days consumed upon the business. Making every allowance which may fairly be supposed called for, because of the inconveniences of the place for handling vessels under repair, the weather that was encountered, and the dilatory habits of the laborers and 16
mechanics in that port, I think the evidence justifies the conclusion that all which was needed might, with proper attention and perseverance by the master, have been supplied the vessel, and she have been put again on her voyage within three weeks after her arrival there. I shall, therefore, order the period for the support of the crew to be limited in the generl average allowance to twenty-one days after reaching Lisbon.

The further items entering into the average adjustment have not been discussed by counsel on either side, and they 17
therefore are not adverted to in detail by the Court. Either party may have the opportunity, if desired, to bring the items of expenses admitted or rejected by the adjustor to the consideration of the Court, and obtain specific directions as to their admission or rejection on the adjustment; or if the parties fail to agree mutually in respect to the cost and support of the crew, the report may be again placed before the adjustor, who will reform it pursuant to this order.

Should the owner of the cargo of fruit not desire to be further heard in his suit against the vessed, the libel in that action will be ordered dismissed, with costs to be taxed.

U. S. Circuit Court.

JOHN DENBREENS *et al.*,

vs.

JOHN J. LAWRENCE.

JOHN J. LAWRENCE,

vs.

The Brig "LIEUTENANT ADMIRAL COLLENBERG."

Sept. 28th, 1859.

NELSON, C. J.—The first of these suits was brought to recover freight on a shipment of fruit from Palermo to New York, in the brig. The second was a cross-suit by the consignee to recover for damages to the fruit in the course of the voyage. The bill of lading contained the usual exceptions of dangers of the sea, &c., and also of liability to inherent decay. The brig sailed from Palermo on the 16th December, 1855, and arrived at New York on May 20th, 1856, after a passage of over seventy days. She encountered a storm on her voyage, and was compelled to bear away to the port of Lisbon, in Portugal, for repairs, where she was detained some forty-seven days in refitting, and where a survey of a portion of the fruit which was perishable (700 boxes of lemons, and 2,150 boxes of oranges) was directed, and which were all discharged from the ship and placed in a well ventilated warehouse or store. The boxes were opened and examined, and the fruit found

3 to be decaying. The unsound were separated from the sound, and then repacked with care—a quantity equal to 414 boxes of the lemons and oranges were found to be so far decayed as to be worthless—the greater proportion oranges. On the arrival of the ship at this port, almost the whole of this fruit was in a very damaged condition.

It is not denied, on the part of the counsel for the consignee, but that the damage was occasioned by the natural and inherent decay of the article; but it is insisted that the fault of the master in the course of the voyage, con-
4 tributed to this damage.

1. It is insisted that the length of time occupied in making the repairs at Lisbon was unnecessary and unreasonable, and that this delay was occasioned by the carelessness and want of energy and activity of the master, and that it contributed to the damage to the fruit: and—

2. That the opening of the boxes of the fruit at Lisbon, and the handling of it, in separating the sound from the unsound, and repacking the same, had a tendency to in-
5 crease the decay of the article, and manifested a want of proper skill in taking care of the fruit in the course of the shipment, and contributed to the damage.

The Court below overruled these positions, and held upon the proofs that the master had not been guilty of any culpable omission of duty on the voyage which caused the loss or deterioration of the fruit, and that the delay of the vessel in Lisbon, where she put in for repairs, beyond the time reasonably required to obtain them, was not the immediate or proxi-
6 mate cause of the injuries the fruit had sustained, and that it being proved that the efforts of the master in Lisbon to preserve the fruit, were made in good faith, and under the advice of experienced and competent persons, and according to the best judgment of the master, the vessel was not responsible for the injuries the fruit received, even if the means used to save it were not the most suitable and well judged; that the master was *quasi* the agent of both parties in respect to the cargo found in a perishing condition on board of his ship, and his acts, honestly put forth in the

emergency with intent to the best interests of all concerned, 7
are to be indulgently considered.

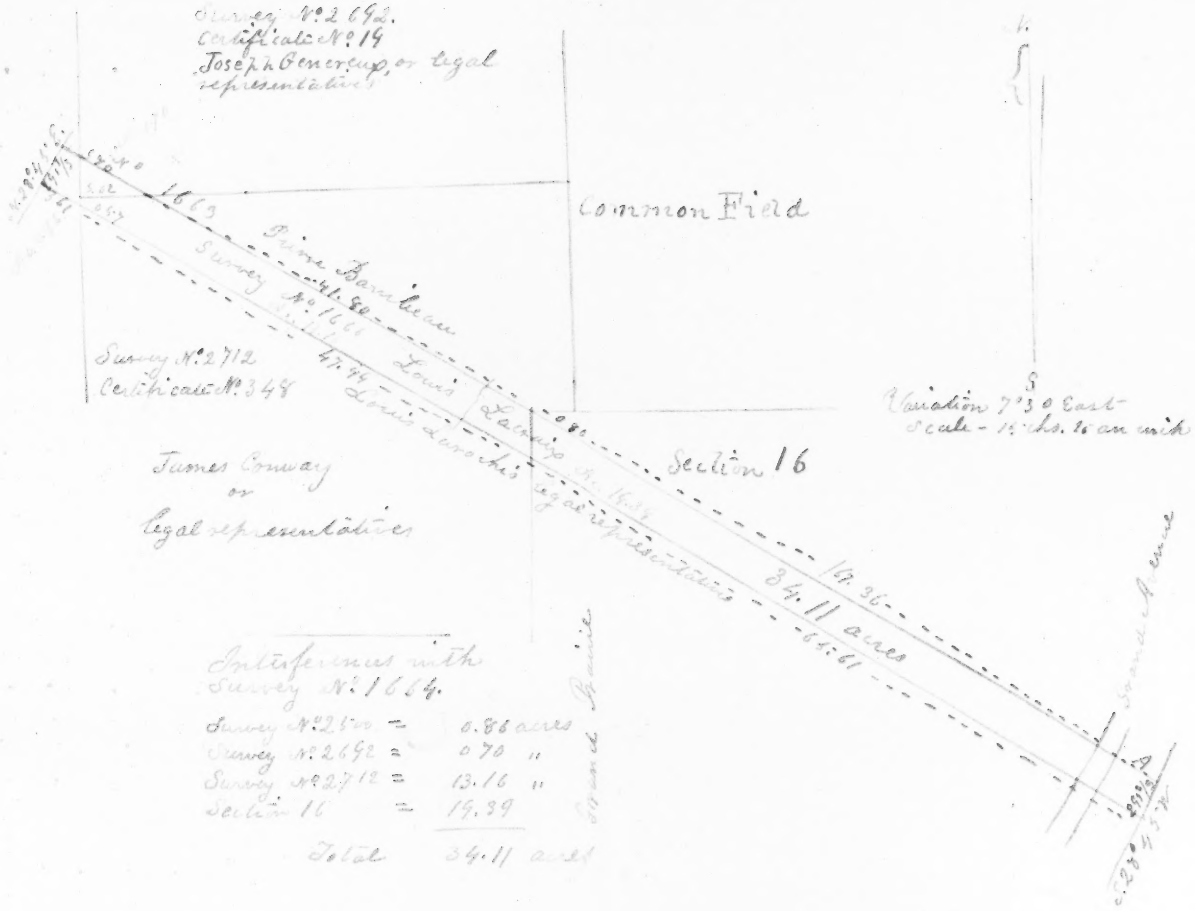
We have looked into the evidence in the case, and although it is contradictory, and in respect to the time consumed in the repairs at Lisbon, not very satisfactory, we think the weight of it sustains the views of the Court below. We admit it is difficult to understand or believe that some seven weeks should be consumed at Lisbon in refitting the vessel, when the work could have been done in this port in as many days. But the evidence returned on the commission executed in Lisbon, explained it fully; not, how- 8
ever, in a manner very creditable to the character or enterprize of the shipmasters of that port, or to the commercial enterprise of the Government of Portugal.

We are satisfied that the decrees of the Court below are right, and should be affirmed.

For appellants, Messrs. Beebe, Dean & Donohue.
For respondents, Messrs. Owen & Vose.

No 281 - Ja: 22

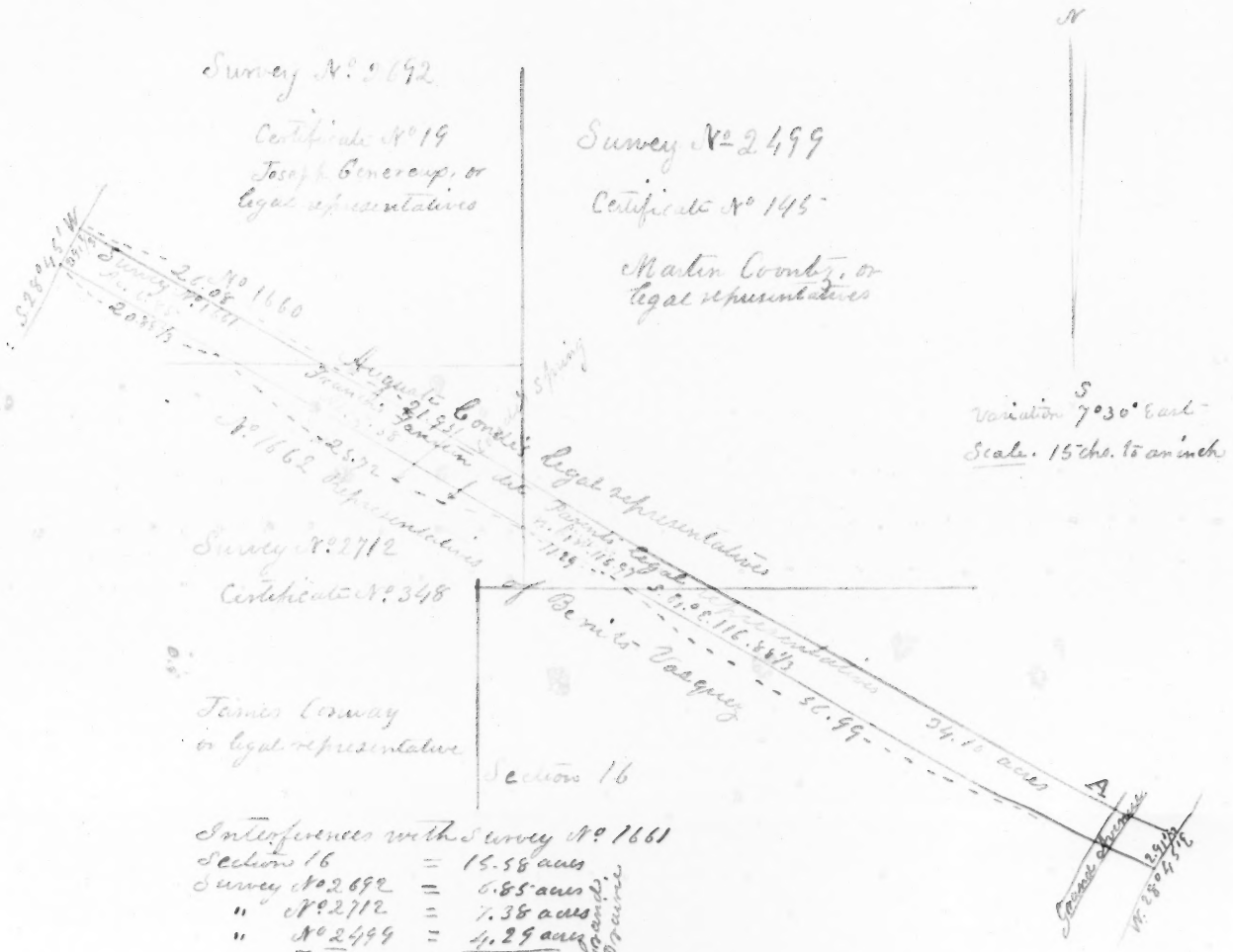
T. 45 N. R. 7 E. of the 5th principal Meridian



№ 282 - pa: 26-

2

Township 4 S. N. R. 1 East of the 5th Pr. Meridian

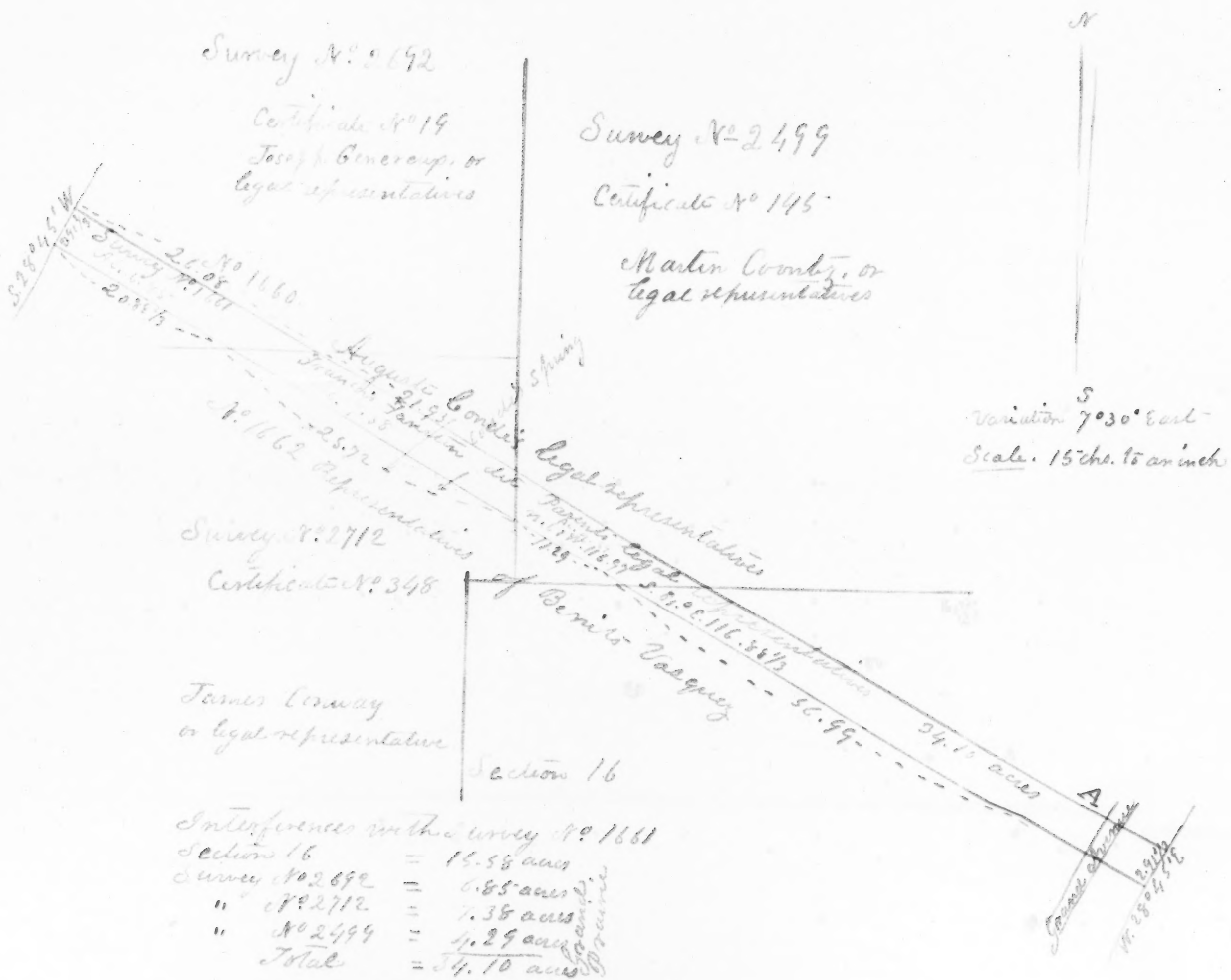


Interferences with Survey № 1661

Section 16	=	18.58 acres
Survey № 2692	=	6.85 acres
" № 2712	=	1.38 acres
" № 2499	=	4.29 acres
Total	=	34.10 acres

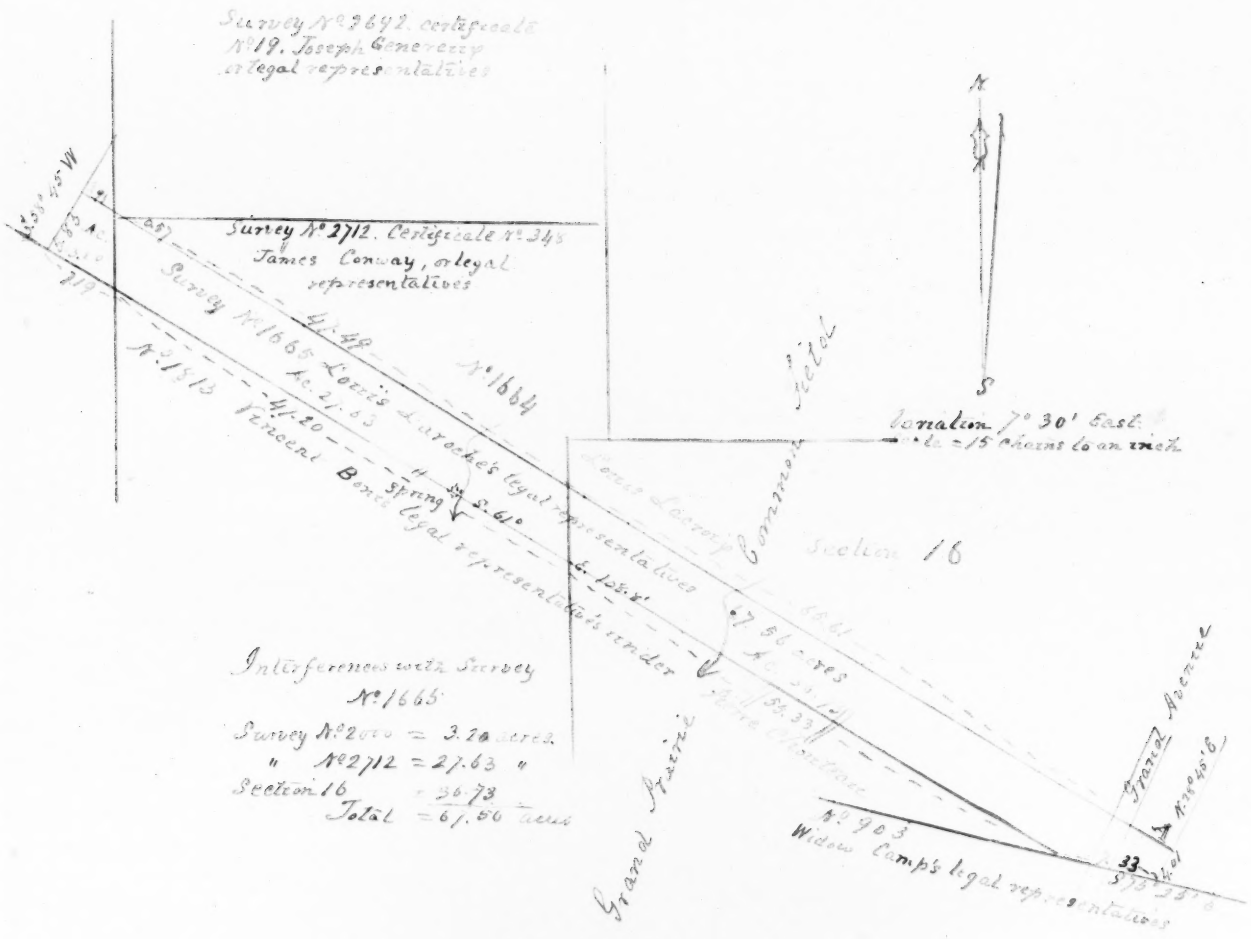
№ 282. pa: 26-

Township 45 N. R. 7 East of the 5th Pl. Meridian



Interference with Survey № 1661

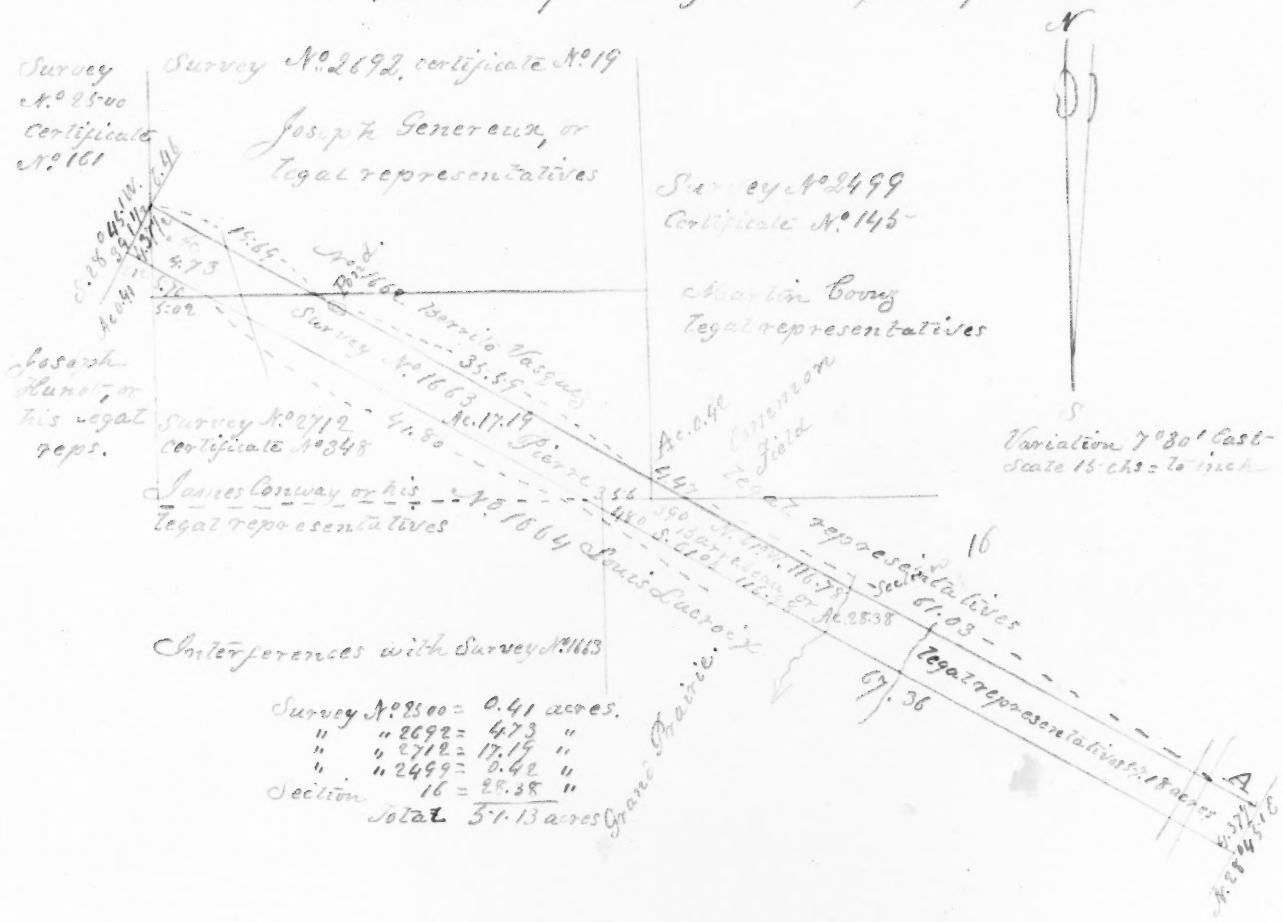
Section 16	=	19.56 acres
Survey № 2692	=	0.85 acres
" № 2712	=	7.35 acres
" № 2499	=	4.29 acres
Total	=	34.10 acres


Survey N° 2692. certificate N° 19. Joseph Genereux or legal representatives
Survey N° 2712. Certificate N° 345 James Conway, or legal representatives
Survey N° 1665 Lozzie Laroche's legal representatives
N° 1664
N° 1515 Vincent Bonte legal representatives
Spring
Section 16
Variation 7° 30' East
Interferences with Survey N° 1665
Survey N° 2692 = 3.10 acres
" N° 2712 = 27.63 "
Section 16 = 30.73
Total = 61.56 acres
Grand Prairie
Trail
N° 903 Widow Camp's legal representatives
33

N° 2 - S. - pa 123

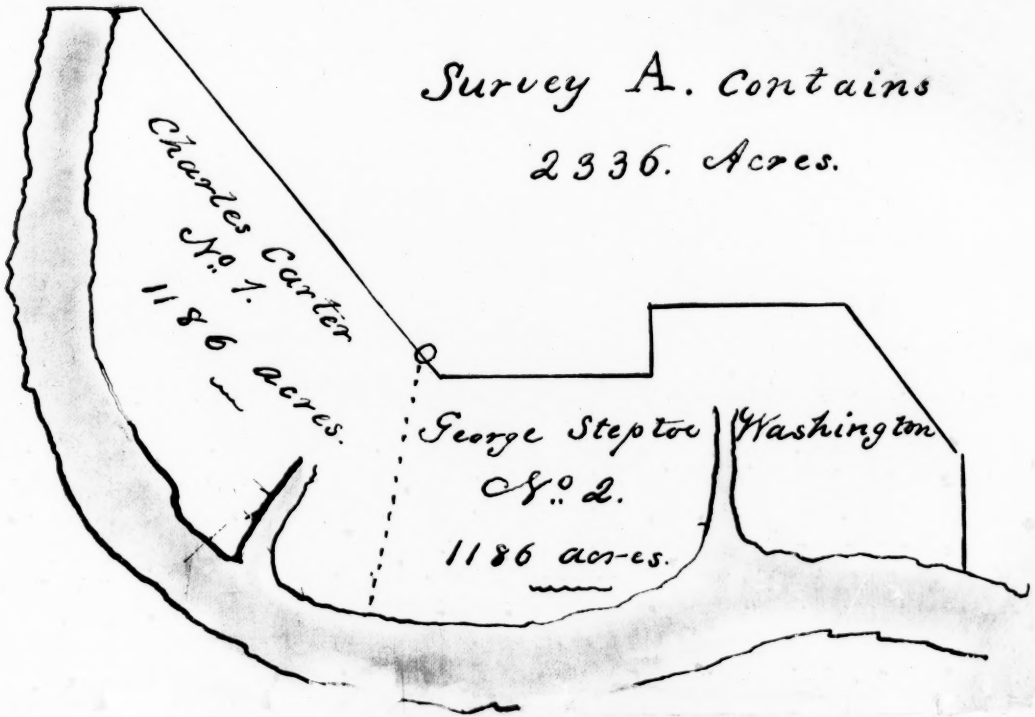
C

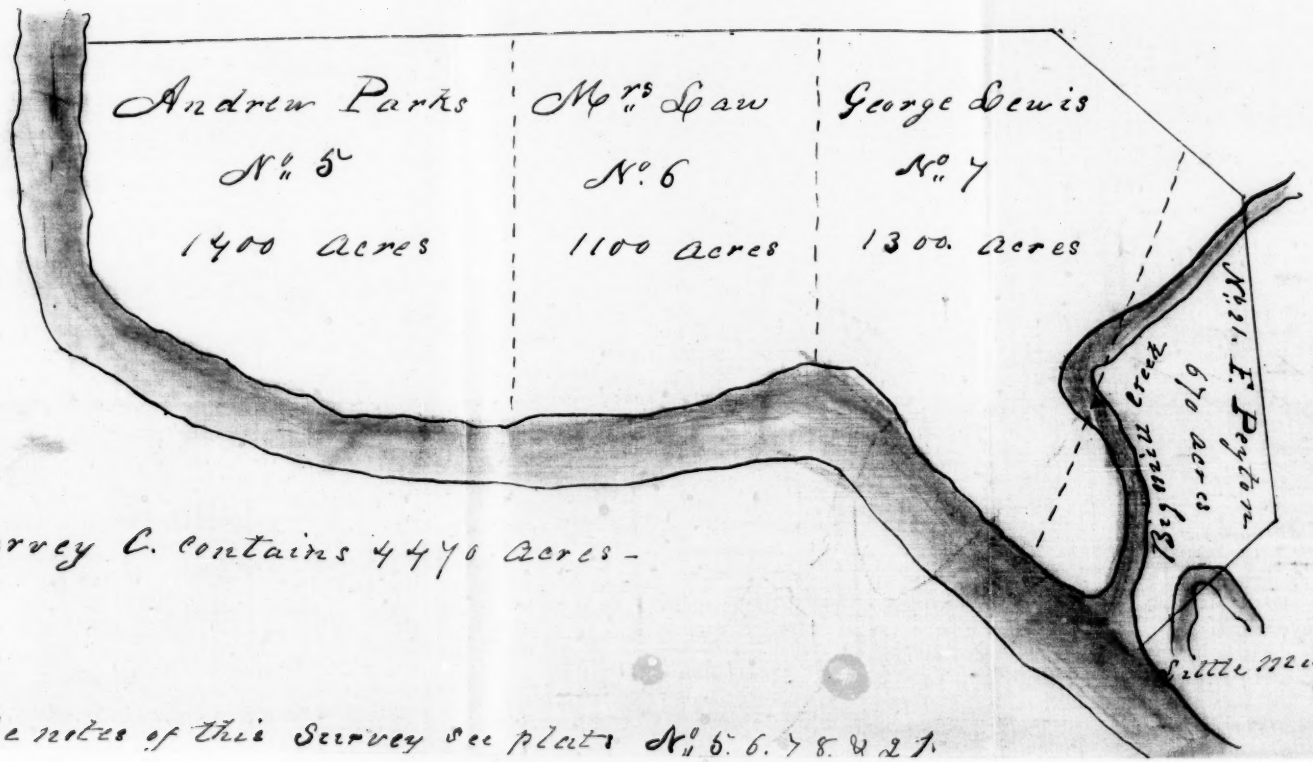
T. 45 - N. R. 7 East of the 8th principal meridian



(5)

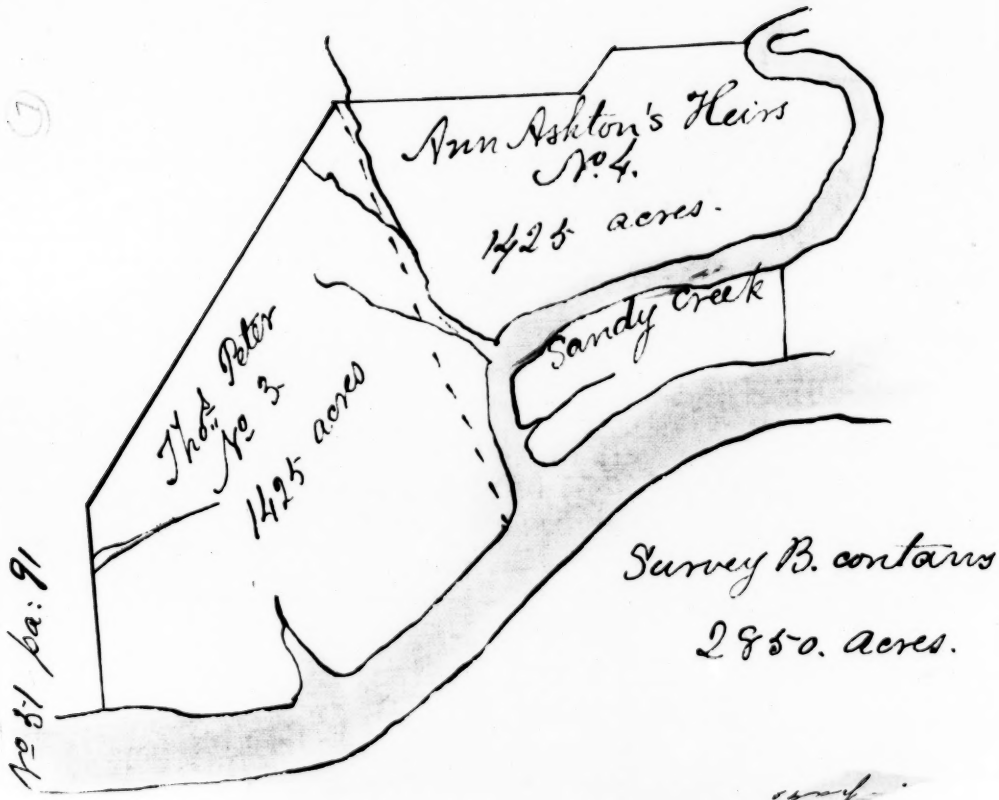
No 81. page 9


Survey A. Contains
2336. Acres.
Charles Carter
No. 1.
1186 acres.
George Steptoe
No. 2.
1186 acres.
Washington

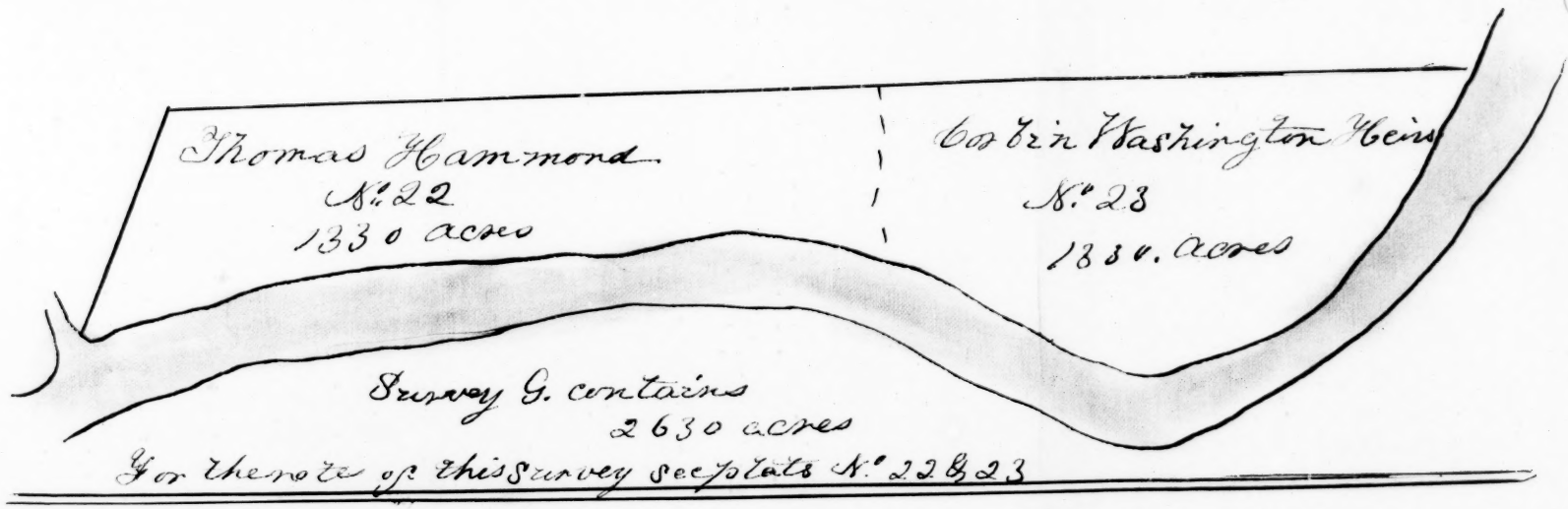


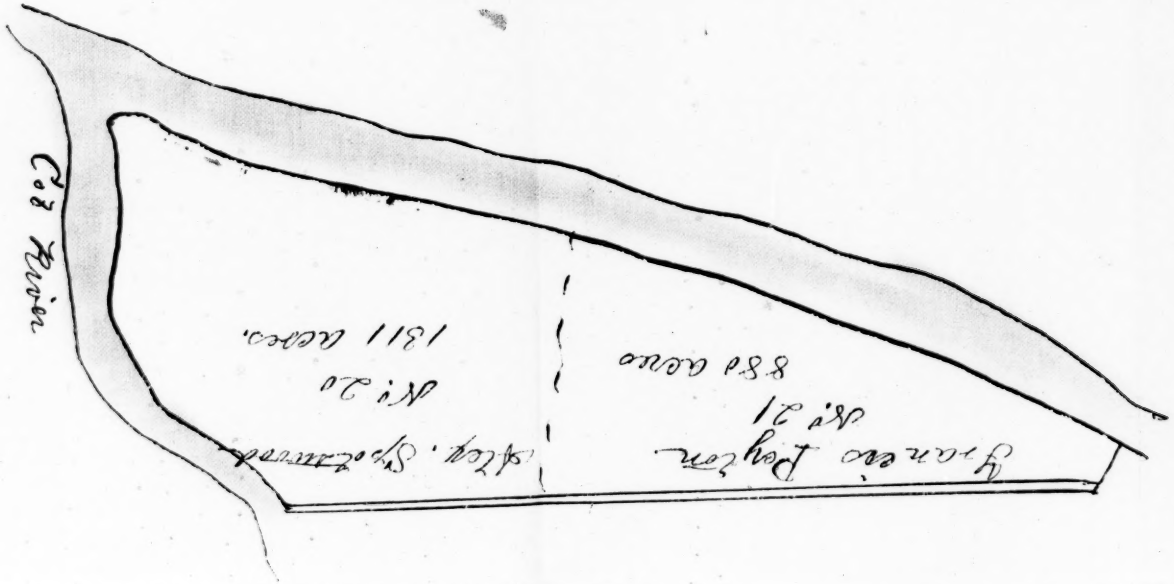
Survey C. contains 4470 acres -

For the notes of this Survey see plats No. 5. 6. 7 8. & 21.

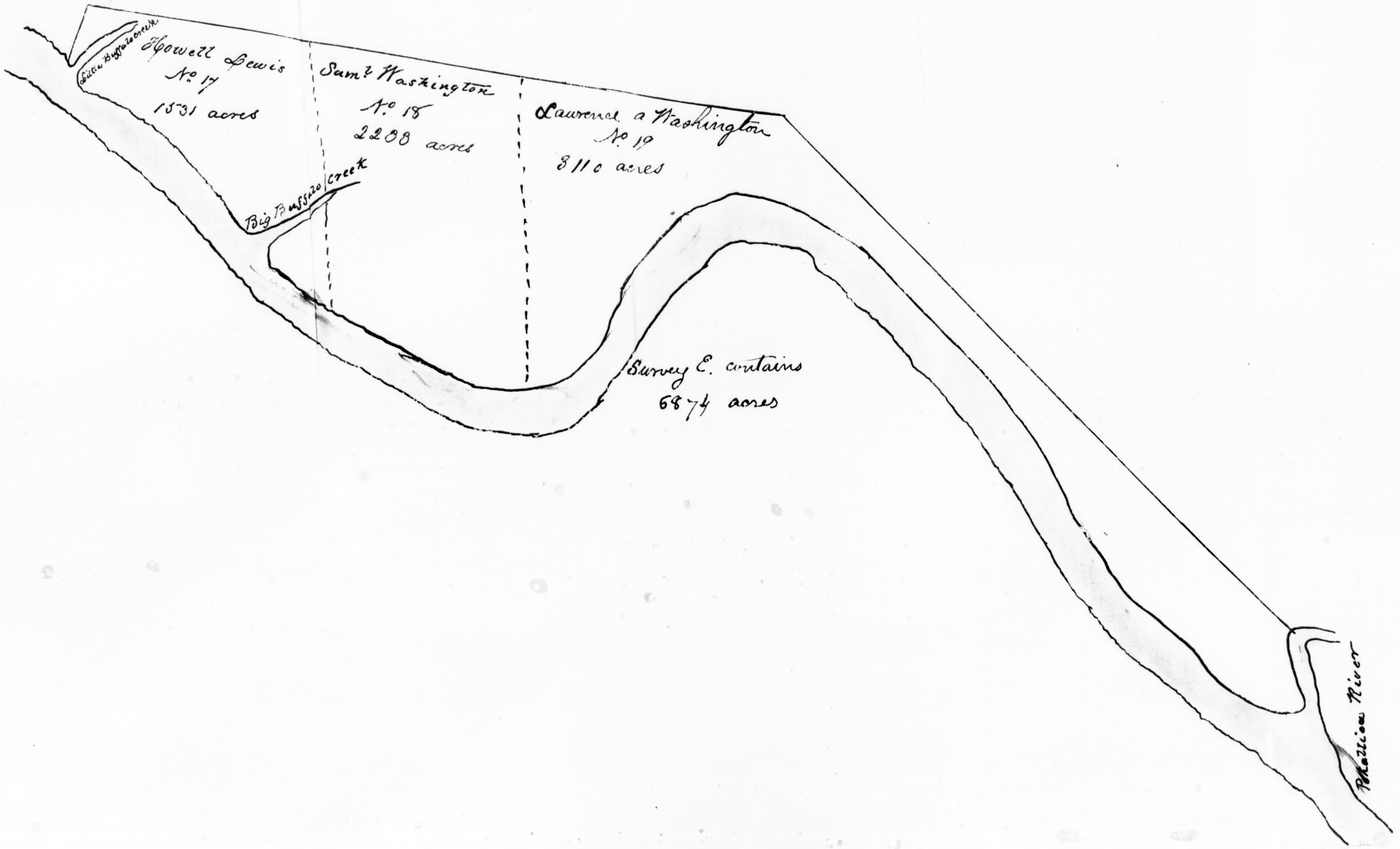

Ann Ashton's Heirs
No 4.
425 acres.
Sandy Creek
Thos. Peter
No 3
1425 acres
No 81 pa: 91
Survey B. contains
2850. acres.

(8)

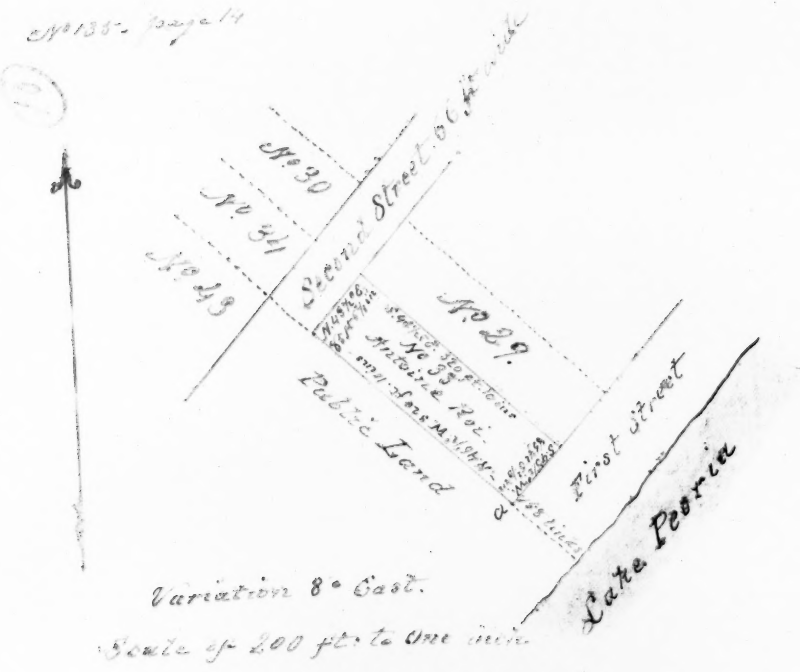


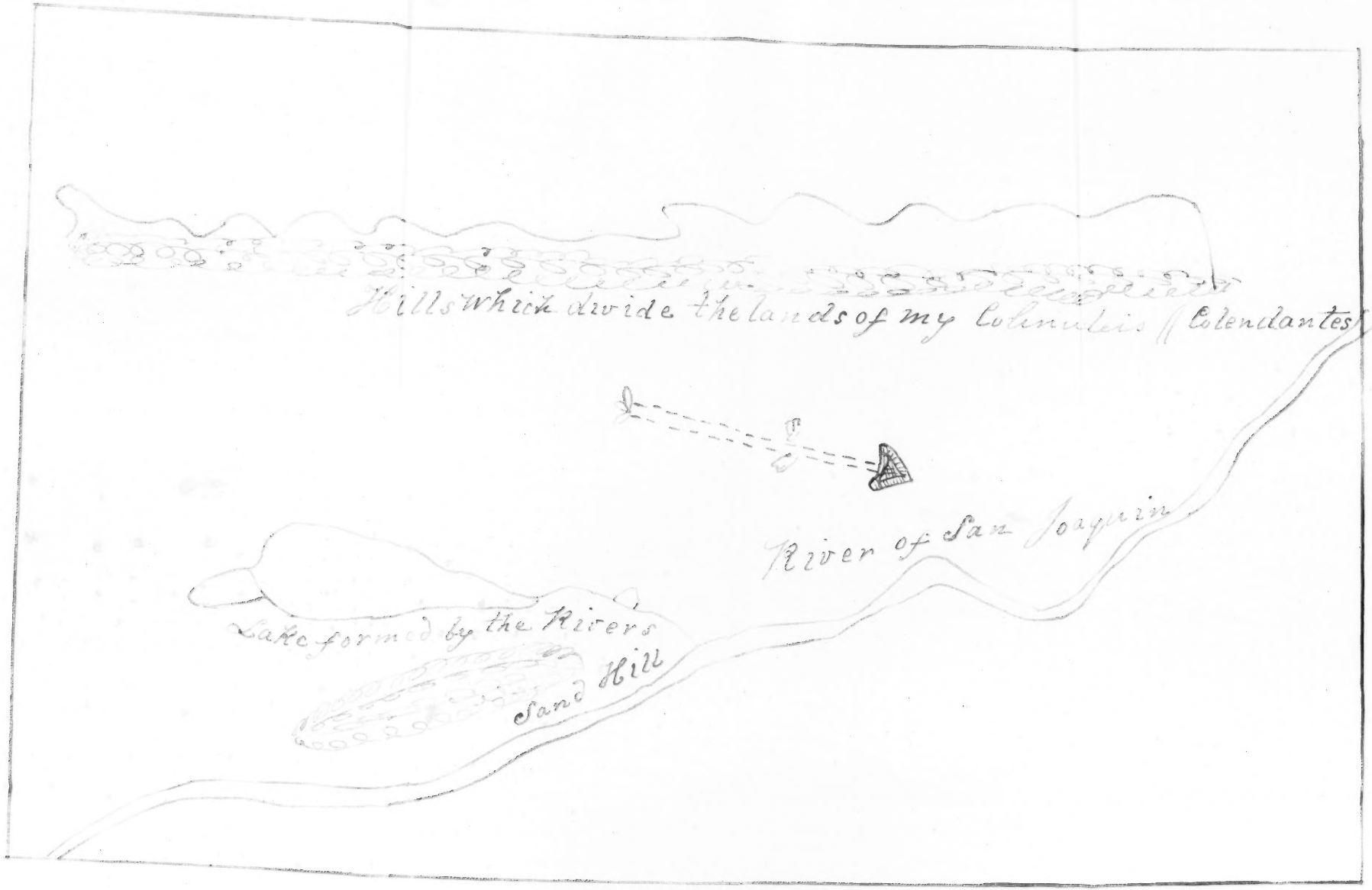


Vol. 1 Page 11 N.° 1


Little Buffalo creek
Howell Lewis
No 17
1531 acres
Sam.l Washington
No 18
2208 acres
Laurence a Washington
No 19
3110 acres
Big Buffalo Creek
Survey E. contains
6874 acres
Potatoe River

No 138 - page 14





No 152. Bucareli to Hunter, Page 53 - Spec.